

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:17-cr-103
(LJV)

vs.

January 21, 2020

DALVON CURRY, a/k/a Dale, a/k/a Dalo,

Defendant.

**TRANSCRIPT OF JURY TRIAL - VOLUME III
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

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and
UNITED STATES DEPARTMENT OF JUSTICE
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BY: KEVIN W. SPITLER, ESQ.
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For the Defendant Dalvon Curry

PRESENT:

KATHERINE M. REBISZ, Paralegal
STEVEN P. DONNELLY, FBI Special Agent

COURT SECURITY:

OFFICER PATRICK J. CORONA

LAW CLERK:

ALLISON P. GIOIA, ESQ.

DEPUTY CLERK:

COLLEEN M. DEMMA

COURT REPORTER:

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NYRCR, NYACR, Notary Public
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1 (Proceedings commenced at 9:15 a.m.)

2 (Jury not present.)

3 THE CLERK: All rise. United States District Court
4 for the Western District of New York is now in session, the
5 Honorable Lawrence J. Vilaro presiding.

6 THE COURT: Please be seated.

7 THE CLERK: 17-cr-103, United States of America
8 versus Dalvon Curry.

9 Assistant United States Attorneys Paul C. Parisi,
10 Seth T. Molisani and Christopher O. Taylor, and paralegal
11 Katherine Rebisz appearing on behalf of the government.

12 Attorney Kevin W. Spitler appearing with defendant.
13 Defendant is present.

14 Also present is FBI Special Agent Steven P. Donnelly.

15 This is the date set for the continuation of the jury
16 trial.

17 THE COURT: Good morning, everyone.

18 ALL PARTIES: Good morning, Judge.

19 THE COURT: Okay. Anything we need to do before we
20 bring them back this morning?

21 MR. PARISI: During the pretrial conferences, the
22 Court asked us to identify when potential issues like
23 coconspirator statements or other acts might come up. And we
24 expect them to come up with our third witness today.

25 I don't know if you want to hear those now before we

1 do the two witnesses scheduled before that witness, or if you
2 want to wait until we do that other witness.

3 THE COURT: I think we'll wait until before that
4 witness. I don't want to delay the jury any more than we have
5 to right now.

6 MR. PARISI: Yes, Your Honor.

7 THE COURT: So we'll do it on break.

8 MR. PARISI: Okay.

9 THE COURT: I think -- make sense for you?

10 MR. PARISI: Yes.

11 THE COURT: Okay, good. Mr. Spitler, any problem
12 with that?

13 MR. SPITLER: No, Judge.

14 THE COURT: Okay, great. Anything else we want to
15 do? There was an article published online this morning. I'll
16 ask the jury, as I'm going to every morning, the same way.

17 MR. SPITLER: Judge, concerning that article. My
18 concern is, is that the photograph that appeared in the print
19 edition, I don't know if it's online, but the print edition
20 that I read this morning identifies and shows a photograph
21 with a memorial for a young 12-year-old boy who was struck by
22 a stray bullet while he sat in his house. And it indicates
23 that that occurred in April of 2019, which is outside the
24 period of the allegations of this conspiracy which terminated
25 in August of 2018.

1 I'm very concerned, Judge, that -- and I know you'll
2 do a very thorough job of asking these jurors about it because
3 that is obviously very negative for my client.

4 THE COURT: I don't know what we do, Mr. Spitler,
5 other than to ask them -- I mean, you say I'm going to do a
6 thorough job. I'm going to do it rather innocuously, because
7 I don't want to attract their attention to something that they
8 may not have seen. So what I will do, as I'm going to do
9 every morning, is say before we begin, has anyone seen or
10 heard or read any news coverage related to this case in any
11 way?

12 MR. SPITLER: Judge, I would respectfully request
13 that you point out to them that an article appeared on the
14 front page of the Buffalo News above the fold.

15 THE COURT: Really?

16 MR. SPITLER: Yes, please.

17 MS. GIOIA: That is -- Judge, he's absolutely
18 correct. It is. I have it up here on my screen. It's above
19 the fold on the left-hand side. Social media helped officer
20 infiltrate gang. There is no photograph on the front page,
21 I'm just looking to see. The photograph --

22 MR. SPITLER: It's on page 8.

23 MS. GIOIA: The photograph that was in the online
24 print edition was the photograph we've seen before of three
25 officers inside the Towne Gardens. That's what was in the

1 online edition.

2 MR. SPITLER: In the print, Judge, on page 8, again
3 it is a photograph of a -- of a memorial, these kinds of
4 things where people leave little Teddy bears and flowers
5 outside the door of where the young person --

6 THE COURT: So you would like me to call to their
7 attention that there was a -- in today's paper? Is it in
8 today's paper?

9 MR. SPITLER: It's in today's paper, yes, Judge.

10 THE COURT: You'd like me to call that to their
11 attention?

12 MR. SPITLER: I would, Judge, because I'm concerned
13 that either following your directions they didn't look at it,
14 but as they had breakfast with somebody, they know that
15 they're on trial here, they go oh, my gosh, look at this. And
16 that's all we have to -- and I'd just like to -- I don't want
17 to just say, hey, did you hear anything about it?

18 I think it's a very -- I think it's very negative to
19 my client and would adversely affect the jurors. So I would
20 like -- that's my request.

21 THE COURT: Okay. Any objection to that?

22 MR. PARISI: I guess, how specific are we going to be?

23 THE COURT: I'll say I've been told -- I haven't seen
24 it myself, so I will say I've been told that in today's -- as
25 I've asked before, has anyone seen or read or heard any news

1 coverage of this case. And then if nobody raises their hand,
2 I'll say I've been told there was a front-page article in
3 today's paper. Has anybody seen that?

4 MR. PARISI: No objection to that, Your Honor.

5 MR. SPITLER: Yes, Your Honor.

6 THE COURT: Is that a good way to do it?

7 MR. SPITLER: Yes, please.

8 THE COURT: Okay. Is there anything else that we
9 should -- that we should do?

10 MR. SPITLER: No, Your Honor.

11 MS. GIOIA: This is it.

12 THE COURT: Oh, thank you. Okay.

13 Ready to bring them in?

14 MR. SPITLER: Yes, Your Honor.

15 MR. PARISI: Yes, Your Honor.

16 THE COURT: Okay. Let's bring them in, Pat, please.

17 MR. PARISI: Your Honor, would you like the witness
18 back on the stand?

19 THE COURT: Sure, please.

20 (John Pietrzak seated at 9:21 a.m.)

21 (Jury seated at 9:23 a.m.)

22 THE COURT: Okay. Good morning and welcome back,
23 everyone. The record should reflect that all our jurors,
24 again, are present.

25 And as I'll ask you every morning, has anybody seen

1 or heard or read any news coverage of this case over the
2 weekend?

3 JURORS: No.

4 THE COURT: Okay. I understand -- I've been told
5 that today there was actually a front-page article in the
6 news. Did anybody see that?

7 JURORS: No.

8 THE COURT: Okay. Don't look at the newspaper today.
9 Great. Okay.

10 The witness is on the stand. I remind the witness
11 that he's still under oath.

12 THE WITNESS: Yes, sir.

13 THE COURT: And you may continue.

14 MR. PARISI: Thank you.

15

16 **J O N A T H A N P I E T R Z A K**, having been previously duly
17 called and sworn, continued to testify as follows:

18 **EXAMINATION BY MR. PARISI (CONT. DIRECT):**

19 Q. Good morning, Lieutenant.

20 A. Good morning.

21 Q. Just to go back briefly to a discussion of SnapChat and
22 how it works. You told us last week that there was the
23 method of the person recording through the application, and
24 that gets broadcast out through the application, correct?

25 A. Yes.

1 Q. Is it also possible for a person, well, are you aware
2 that people can use their cellular phones to take photos and
3 videos that store on their cellular phones?

4 A. Yes.

5 Q. Is it possible that a person can use SnapChat to access
6 the photos or videos that are already stored on their phones?

7 A. Yes.

8 Q. And how does a person go about doing that?

9 A. Through the app, you have the option to choose to make a
10 live video photo or to access your camera roll, is how it's
11 described in most phones. And you can then pick a photo or a
12 video from your stored camera roll to broadcast on to the
13 SnapChat application.

14 Q. And you, as a person viewing someone else's SnapChat
15 video or picture, can you know which one is a live picture or
16 video from -- or, whether versus something that's from a
17 camera roll?

18 A. Yes. So what will happen is if it's from the camera
19 roll, in the top left corner of the image that's been
20 broadcast, whether it's a video or a photo, it will say from
21 camera roll, and it will say if the -- if it was captured
22 with a date and time, it will give a rough estimate, say for
23 example, one week old or two weeks old, or four days old, so
24 on and so forth. So you can typically tell if it's an old
25 video or photo, or if it's live, based on that information.

1 Q. And if it's live, it will not have that information on
2 there?

3 A. It will just say 3 hours old, 23 hours old, 10 minutes
4 old, so on and so forth.

5 Q. With respect to something called SnapChat memories, do
6 you know what those are?

7 A. Yes.

8 Q. What are those?

9 A. Those are old snaps of -- old snaps that were posted that
10 are saved in the memory section. So what will happen in that
11 case, if someone were to post it, if for example, I were to
12 post a video last Wednesday, and I thought it was something
13 that I wanted to show again, I would access my memories, pick
14 that photo or video, hit send, and it would say on the
15 newest -- newest transmission posted from memories in the top
16 left corner. And it would say how long ago it was made from
17 those memories.

18 Q. Now I'd like to move on to another incident back on
19 August 30th, 2015. Were you working on August 30th, 2015?

20 A. Yes.

21 Q. What was your shift on August 30th, 2015?

22 A. I was on the overnight shift in, I believe, E District at
23 the time.

24 Q. Did you respond to a call in the area of Genesee and
25 Crossman on August 30th, 2015?

1 A. Yes.

2 Q. Do you recall what time that you went to that call?

3 A. It was in the later hours of that night, so approximately
4 10 or 11:00.

5 Q. Do you have a specific memory of what time?

6 A. No.

7 Q. Is there anything that I can show you that would refresh
8 your recollection?

9 A. A printout of the call log would be helpful.

10 Q. Lieutenant, I'm going to hand you --

11 THE COURT: Any objection to showing him that,
12 Mr. Spitler?

13 MR. SPITLER: No, Your Honor.

14 BY MR. PARISI:

15 Q. I'm going to hand you what's marked for identification as
16 Government Exhibit 3604.02, and ask if you recognize what
17 that is?

18 A. Yes. This is a printout of a call log that's generated
19 by our computer-aided dispatching system.

20 Q. Does that refresh your recollection as to the time that
21 you responded to the call?

22 A. Yes.

23 Q. And what time did you respond to the call?

24 A. 9:27 p.m.

25 Q. What area of the city is Genesee and Crossman?

1 A. It is the -- it encompasses the northeastern portion of
2 the C District and the southeastern portion of the
3 E District. It's essentially the northeast part of the city
4 that butts up with the city line with Cheektowaga.

5 Q. Is it in the Towne Gardens?

6 A. No.

7 MR. PARISI: Ms. Rebisz, can we have Government
8 Exhibit 1.1, please? Only show it to the witness at this
9 time.

10 BY MR. PARISI:

11 Q. Lieutenant, do you see Government Exhibit 1.1 that's in
12 front of you?

13 A. Yes.

14 Q. What is Government Exhibit 1.1?

15 A. It's a map of what looks to be a good chunk of Erie
16 County and the City of Buffalo.

17 Q. And with respect to the City of Buffalo, does that fairly
18 and accurately depict the layout of the City of Buffalo on
19 August 30th, 2015 and to January 1st, 2017, the events that
20 you've testified about?

21 A. Yes.

22 MR. PARISI: Your Honor, the government would offer
23 Government Exhibit 1.1 as evidence.

24 MR. SPITLER: No objection.

25 THE COURT: Received without objection.

1 **The following was received in Evidence:**

2 **GOVERNMENT EXHIBIT 1.1**

3 MR. PARISI: May we publish to the jury?

4 THE COURT: Sure.

5 BY MR. PARISI:

6 Q. Lieutenant, do you see the area of Genesee and Crossman?
7 And if you need us to zoom in on a certain area, please let
8 us know.

9 A. Yeah, if you can zoom in on the northeastern portion of
10 the map, that would be helpful.

11 One more time would be good.

12 Yes, I do.

13 Q. And can you please identify that area just by circling it
14 on the touchscreen?

15 A. Can you actually bring it down just a little bit going
16 south? That would be helpful. That's perfect. I'm trying
17 to get my layout here.

18 It's in this area over here. It's very blurry, to narrow
19 down what exactly the street is.

20 Q. Now, if we zoomed out of this, would you be able to
21 identify that through the area?

22 A. It might help out a little bit, just a --

23 Q. Just so we can see relative to the city?

24 A. Yeah.

25 Q. Is it possible for you to -- I know it's small writing.

1 A. It's in this area over here.

2 Q. And so you've -- you made a circle with a purple mark on
3 the right-hand -- in the middle right portion of the map; is
4 that correct?

5 A. Yes.

6 Q. And what was the call that you responded to?

7 A. Shots fired.

8 Q. When you responded to that call of shots fired at about
9 9:27 p.m., what did you do upon arriving?

10 A. When I arrived at the area, I looked for any -- anyone
11 involved that's actively shooting. I looked for any
12 witnesses that wanted to come forward to indicate what they
13 saw. Looked for any victims or any complainants that wanted
14 to report any property damage.

15 Q. Did you find any victims on August 30th, 2015?

16 A. No.

17 Q. Did you, on August 30th, 2015, observe any property
18 damage?

19 A. I did not.

20 Q. What -- is there a store, a residence, a business,
21 located at Genesee and Crossman?

22 A. There's a gas station and convenience store.

23 MR. PARISI: If I could -- if we can show page 1 of
24 what's in evidence as Government Exhibit 111, please?

25 BY MR. PARISI:

1 Q. Do you recognize the Snap Express from Government
2 Exhibit 111?

3 A. Yes.

4 Q. What is that?

5 A. That's the store that's located at the corner of Genesee
6 and Crossman.

7 MR. PARISI: Your Honor, I'd like to play for only
8 the witness Government Exhibit 29.1 without the audio.

9 (Video was played.)

10 BY MR. PARISI:

11 Q. Lieutenant, did you see Government Exhibit 29.1 which was
12 played for you?

13 A. Yes.

14 Q. And is this, first of all, does this appear to be -- to
15 be a SnapChat video that you downloaded?

16 A. No.

17 Q. Are you aware that someone else downloaded it?

18 A. Yes.

19 Q. What I'd like to ask you, do you recognize the location?

20 A. Yes.

21 Q. What location is that?

22 A. That's the store located at Genesee and Crossman, the
23 Snap Express Mart.

24 Q. The one that we just saw in Government Exhibit 111?

25 A. Correct.

1 MR. PARISI: May I have one moment, Your Honor?

2 No further questions, Your Honor.

3 THE COURT: Mr. Spitler?

4 MR. SPITLER: Thank you, Judge.

5 **EXAMINATION BY MR. SPITLER (CROSS):**

6 Q. Good morning, Lieutenant.

7 A. Good morning, sir.

8 Q. You and I have not spoken concerning this case before,
9 have we?

10 A. No, sir.

11 Q. All right. First off, I'd like to ask you about these
12 undercover personas you have on the different social medias.
13 I think you told us you'd been doing that for a period of
14 time, maybe about four years or so, some of them?

15 A. Yes.

16 Q. Now, you know what a search warrant is, right?

17 A. Yes.

18 Q. You didn't get a search warrant to get on any of these
19 social media sites, correct?

20 A. No.

21 Q. Okay. And so basically what you did is you made up who
22 you were, and then you asked somebody to friend you, correct?

23 A. Yes.

24 Q. So if you made up that you were -- whatever names you
25 used -- what names did you use, by the way?

1 MR. PARISI: Objection, Your Honor. Subject to the
2 pretrial ruling.

3 MR. SPITLER: Okay. Let me withdraw it. I
4 understand the objection. Withdrawn.

5 THE COURT: Withdrawn.

6 BY MR. SPITLER:

7 Q. So you made up this -- this fake persona, and you would
8 ask people to friend you, correct?

9 A. Yes.

10 Q. Okay. And then if somebody friended you, and you wanted
11 to friend somebody else, in your fake persona you would say,
12 hey, friend me. I'm friends with A, why don't you let me be
13 friends with you, B, because A and B are friends? That's how
14 you do it, right?

15 A. No, there's --

16 Q. How did you do it?

17 A. -- there's no communication I have had with anyone that I
18 have been involved with on social media. Other than putting
19 out a friend request there's been no communication
20 whatsoever.

21 Q. Okay. So you would never indicate to anybody when you
22 asked for a friend request, I'm already friends with somebody
23 else that you're friends with, let's you and I be friends?
24 You didn't do it that way, correct?

25 A. Correct.

1 Q. Okay. So, and I don't -- how many times did you do this?

2 How many people did you friend like this?

3 A. This -- at this point, I'm probably in the hundreds.

4 Q. Hundreds? Okay.

5 And so clearly if you've got hundreds, these are people
6 that would be outside the Towne Gardens, as well, correct?

7 A. Yes.

8 Q. Okay. Now I -- you do this with the approval of your
9 superiors in the Buffalo Police Department, correct?

10 A. Yes.

11 Q. And you shared with other members of law enforcement
12 outside the Buffalo Police Department that you were engaging
13 in this subterfuge to become friends with somebody, correct?

14 A. Yes.

15 MR. SPITLER: Can we bring up 112.4, please, in
16 evidence?

17 THE CLERK: Thank you.

18 BY MR. SPITLER:

19 Q. Do you see that? Do you see that on the screen, right?

20 A. Yes, sir.

21 Q. And that is a post by my client, correct?

22 A. Yes.

23 Q. I see the time in the upper left-hand corner as 9:49. Do
24 you see that, right?

25 A. Yes.

1 Q. Okay. And then as we come down, there's a -- there's a
2 statement concerning cut it, no snitching. And then below
3 that, there's another entry on April 29th of 2016; is that
4 correct?

5 A. Yes.

6 Q. Right? Do you know what that is about? Did you search
7 out to determine what was going on with that?

8 A. I don't recall if I put that link in at any point.

9 Q. Okay. But you see what it says? It says -- it's from my
10 client, and it says vote for me to perform at the #ATLedition
11 on 7/11/2016, right?

12 A. Yes.

13 Q. Did you ever determine what the A-T-L -- #ATLedition on
14 7/11/16 was?

15 A. No.

16 Q. Well, and then you see that there's an entry below that
17 on February 27th of 2016, same request, right?

18 Pardon me. Different request, at #conversation kickoff
19 edition 9/2/16. Saw that, as well. Do you see that as well?

20 A. Yes.

21 Q. Did you check out what that was?

22 A. I did not.

23 Q. Okay. You know that my client is a rapper, correct? You
24 saw that from being on his website? You saw it from looking
25 at the videos, right?

1 A. Yes.

2 Q. Do you, by the way, know what the -- whether or not
3 Facebook will pay you if you have enough followers or if you
4 have enough views over a certain period of time?

5 A. I don't know that.

6 Q. Did you ever try to determine that?

7 A. No.

8 Q. Would that be relevant in your investigation if someone
9 was trying to generate followers and generate views to make
10 money? Did -- would you find that to be relevant to
11 determine the purpose of the posts that you are -- that you
12 downloaded and presented as the evidence here?

13 A. For purposes of my investigation and the totality of the
14 circumstances, it's not relevant to my investigation.

15 Q. Okay. So you didn't care why he was posting them, that's
16 what you're telling me, right? You didn't care why he's
17 posting them. You just said, hey, it's a post, I'm going to
18 download it and I'm going to provide it to the government,
19 right?

20 A. No, that's not accurate.

21 Q. You cared because you thought that the post was
22 threatening or indicates some criminal activity?

23 A. That's correct.

24 MR. SPITLER: Okay. Can we go to 112.5 in evidence?

25 BY MR. SPITLER:

1 Q. So we can see that this was posted on January 27th of
2 2016 about 5:46, correct?

3 A. Yes.

4 Q. And we can see what it says, correct?

5 A. Yes.

6 Q. Okay. And you believed that that -- well, why -- why did
7 you preserve that? Why did you preserve that one?

8 A. It appears a general threat to someone that would be in
9 opposition to your client.

10 Q. Okay. Now did you ever, when you saw something like
11 that, did you ever, like, say, gee, I wonder if this is a
12 lyric, or if this is just a statement by my client? A lyric
13 from a song.

14 A. There's no way to determine if it was or was not.

15 Q. Okay. Are you saying that if you go on Google and you
16 type in that phrase, tough love for them Ns thinking they
17 next, I'm on their ass, did you ever type that into Google to
18 see if it searched to anything?

19 A. I did not.

20 Q. Okay. I have to ask you then. Are you familiar with
21 Chief Keff, spelled K-E-F-F?

22 A. No.

23 Q. Familiar with a song that he put out called Macaroni
24 Time?

25 A. I'm not.

1 Q. Are you familiar that one of the lines in Macaroni Time
2 is tough love for these Ns, they think they next, I'm on they
3 ass. You never saw that, right?

4 A. No.

5 Q. Okay. Therefore, you know when people -- you -- you look
6 at a lot of social media, correct?

7 A. Yes.

8 Q. Okay. And people will post on social media things like,
9 hey, I'm going to the store with my cousin. They'll post
10 something on -- something like that on social media, correct?

11 A. Yes.

12 Q. They'll post on social media things that they saw in the
13 news, correct?

14 A. Yes.

15 Q. They'll post on social media relevant to the poster an
16 athletic event or a score, correct?

17 A. Yes.

18 Q. Do you ever see people post on social media lines from
19 music?

20 A. Yes.

21 Q. Okay. Based upon what I've told you about Chief Keff and
22 Macaroni Time, that's a line from a musical, isn't it?
23 That's a line from lyrics, isn't it?

24 A. I haven't reviewed it, what you're saying there, so if
25 I'm trusting you, yes.

1 Q. Okay. Good. Thank you.

2 MR. SPITLER: Can you bring up 112.10, please, also
3 in evidence?

4 BY MR. SPITLER:

5 Q. These are posts, Tweets, pardon me, from my client,
6 correct?

7 A. Yes.

8 Q. And the third Tweet which was posted on January 23rd of
9 2016; is that correct? Is that --

10 A. Yes.

11 Q. Now, I can see that these all appear to be posted on --
12 at least five of the six posted on the same day. By the way,
13 when we're looking at this, is it the newest post that's at
14 the top, and so we go down to the old post? Or does it come
15 up from the bottom? Do you know?

16 A. The newest post begins at the top.

17 Q. At the top?

18 A. Yes.

19 Q. So looking at this, we can come up and see, so to speak,
20 the flow of the post, correct?

21 A. Yes.

22 Q. Okay. And I have to ask you, but the third post from the
23 top, it says, young killers want to join the team, when a
24 recruit ya?

25 A. No, it says then a recruit ya.

1 Q. Then. Thank you. Then a recruit ya.

2 Now, you felt that that was -- well, why did you save
3 that post?

4 A. Again, to discussing potential, in the totality of the
5 circumstances, based on the investigation, that appears it
6 could be indicating that he's looking for someone to assist
7 in violence.

8 Q. Okay. And it could be that, correct?

9 A. Yes.

10 Q. Could be that, or could it be another lyric from a song?

11 A. It could be both.

12 Q. Okay. All right. And you presumed it, therefore, to be
13 that it was a some sort of possible criminal activity or an
14 indication of criminal activity, correct?

15 A. Yes.

16 Q. And that was your assumption, based upon the post?

17 A. Yes.

18 Q. Now, are you familiar with a rap artist AR-AB?

19 A. No, I'm not.

20 Q. Have you ever heard of their song, BLOW3?

21 A. No.

22 Q. And are you familiar that in that -- well, you must not
23 be familiar with it. So you never searched, again, you never
24 Googled that phrase to see if it appeared in any sort of a
25 music video or rap video, correct?

1 A. No.

2 MR. SPITLER: Okay. Can we go to 112.11, please?

3 BY MR. SPITLER:

4 Q. We see the Tweets, and I'd like to ask you about going
5 from the top, the second one down that starts, nah beef.

6 The third one, Beegs when you -- when you can't.

7 The fourth -- fourth one, N, what's beef.

8 The fifth one, I'm about a quit rapping.

9 And the sixth, stuck on parole.

10 Those were all the ones you felt relevant and therefore
11 necessary to save, correct?

12 A. Yes.

13 Q. I just asked you, but were you aware that any of those
14 that I've just referenced you to appeared in the AR-AB BLOW3
15 lyrics?

16 A. No.

17 Q. So you never tried to determine at any time, you would
18 just print these out and you never tried to determine where
19 they were coming from, did you? Whether they were the
20 product of my client just writing them out, or whether they
21 were some lyric that he was posting on there, correct?

22 Posting -- I'm sorry, Twitter, correct? You never did that?

23 A. Your client posted them, and --

24 Q. He posted it?

25 A. Yes.

1 Q. And you never tried to determine whether those were his
2 thoughts, his words, or the words that he was copying from
3 another -- from another source, from another lyric, from a
4 song, from a post of someone else, correct?

5 A. No.

6 Q. No. And you drew that opinion because you thought that
7 my client was a criminal, correct?

8 A. Yes.

9 Q. In your testimony on this past Thursday, you were also
10 asked about other Tweets and posts that you had preserved
11 from other individuals.

12 Is it fair for me to assume that any time you preserved a
13 post was because you thought it had some sort of underlying
14 criminal element to it?

15 A. Yes.

16 Q. Like, for instance, if somebody posted, hey, I'm going to
17 go see my grandmother for the weekend, you wouldn't preserve
18 that, would you?

19 A. It would all depend on the circumstances surrounding who
20 that person was, where their grandmother lived, what events
21 had taken place at that time.

22 Q. Okay. So every post you looked at, as it relates to my
23 client, your initial impression was, has this got any
24 criminality to it, right? Right?

25 A. I don't know if you want to say "criminality," but is it

1 connected to any events that have taken place at or around
2 the time it was posted.

3 Q. Or that could take place at some point in the future,
4 correct?

5 A. Yes.

6 Q. Do you know how many Tweets of my client you looked at
7 over the four years, five years?

8 A. Many. I don't have an exact number.

9 Q. Would it be more than a hundred?

10 A. I -- it's fair, it's fair to say. I don't have --

11 Q. It could be thousands, correct?

12 A. Probably in the hundreds.

13 Q. Hundreds? My client was kind of proficient, wasn't he?
14 He just didn't post once or twice a week, did he?

15 A. No.

16 Q. And you did follow him for four or five years?

17 A. Yes.

18 Q. You looked at those videos that we saw, the three videos,
19 and I think your testimony would always be, like either on
20 the still photo or the video itself, of what appeared to be a
21 gun, correct?

22 A. Yes.

23 Q. And you understand that the definition of a gun under
24 New York Penal Law is a weapon from which a projectile can be
25 discharged, sent out, correct?

1 A. Yes.

2 Q. And you also know that there are things that appear to be
3 guns that aren't guns, correct?

4 A. Correct.

5 Q. And you have no way of telling when you're looking at
6 that video whether the gun is an actual gun, or whether it's
7 a replica of a gun, correct?

8 A. Correct.

9 Q. And when we watched those videos, there was one that
10 appeared to be taken inside, like, an apartment or something
11 like that, correct?

12 A. I don't know which one.

13 Q. Which one I'm talking about? Okay. There's -- there's a
14 video, there's a video, My Side of Town, do you recall that
15 video?

16 A. Yes.

17 Q. Do you recall where that -- the physical location, where
18 that is displayed or shown, where it's filmed. Pardon me.
19 That's the word I should use.

20 A. The My Side of Town?

21 Q. Yes.

22 A. One of the apartments --

23 Q. Okay.

24 A. -- in the Towne Gardens.

25 Q. And that's where individuals, my client included, are

1 standing in front of the building, there seem to be a couple
2 of guys up on a window or outside of a window, correct?

3 A. Without looking at this video and knowing exactly what
4 segment of it you're referring to it, I'm having a hard time
5 testifying to it.

6 Q. And there's a second video that's filmed in the vicinity
7 of a gas station, correct? Do you remember that?

8 A. There is a video that is near a gas station, yes.

9 Q. Okay. And there's another video where they seem to be
10 outside a liquor store on Jefferson Street, correct?

11 A. Yes.

12 Q. Okay. Now, do you know when those videos were made?

13 A. No.

14 Q. Is there any identifying -- is there anything to identify
15 when the video was made?

16 A. You can only tell when it was posted on YouTube.

17 Q. Okay. You had told us a little bit about SnapChat, that
18 you could kind of determine when something was posted to
19 SnapChat based upon looking in the upper left-hand corner, if
20 it was from memory or 10 minutes ago or 23 hours ago. Can
21 you do that with YouTube?

22 A. No.

23 Q. No? Okay. When you watch those videos, you note that at
24 the start of the video, there's an indication of who had
25 produced it, @A_KAM_VISUALS, do you recall that?

1 A. Yes.

2 Q. Okay. Did you speak with anyone from A KAM Videos as a
3 part of this investigation?

4 A. I did not.

5 Q. Do you know if anybody else did?

6 A. I don't.

7 Q. You've told us that you watched a lot of posts and Tweets
8 and YouTube as part of your undercover work, correct?

9 A. Yes.

10 Q. Have you seen other videos like the three that we've
11 seen, where young men are rapping and displaying what appear
12 to be weapons?

13 A. Yes.

14 Q. How many?

15 A. Dozens.

16 Q. Dozens? Okay. Have -- and would that have been during
17 the same time frame, this four- or five-year period, correct?

18 A. Yes.

19 Q. By the way, these videos that you saw that are posted to
20 YouTube, anybody can view them, right?

21 A. Correct.

22 Q. So if I want to watch, for instance, My Side of Town, all
23 I have to do is Google BFL, My Side of Town, and it's going
24 to pop up, isn't it?

25 A. Correct.

1 Q. As a result of your investigation, did anyone file -- are
2 you aware, did anyone file a criminal complaint for
3 harassment as a result of the posting of that video?

4 A. I'm not aware of any complaints of harassment as a result
5 of that video.

6 Q. And you agree with me that harassment is when someone
7 makes a threatening statement towards another person, that
8 would allow them, if they felt threatened by the statement,
9 that they could go to the police and file a criminal
10 complaint, correct?

11 A. If they were alarmed, yes.

12 Q. If they were alarmed, okay. So you were unaware if
13 anyone was alarmed by any of those three videos, correct?

14 A. I'm unaware of any criminal complaints that were made, if
15 anyone was alarmed by the video.

16 Q. Okay. When you watched any of the videos, did you ever
17 attempt to synchronize the singing with the lip movement of
18 the people in the video?

19 A. I watched the videos on YouTube. There was no attempts
20 at any type of synchronization --

21 Q. Okay.

22 A. -- that you're asking about.

23 Q. Okay.

24 MR. SPITLER: May I have just one moment, please?

25 THE COURT: Of course.

1 BY MR. SPITLER:

2 Q. I just want to clarify. You can't testify if that video
3 was made in 2013, 2014, 2015, 2016, 2017, or 2018; is that
4 correct?

5 A. Well, I viewed it before 2018, so I know it wasn't made
6 then.

7 Q. Okay.

8 A. And based on the date of the original post, you can have
9 a rough idea or I can at least determine when it wasn't
10 posted. But there's no definitive date that's on it.

11 Q. Do you remember when it was first posted?

12 A. No.

13 MR. SPITLER: Could you please bring up 94.1 in
14 evidence? Just the start. I don't need you to play it,
15 please. Can we go on a little bit further, please? Please
16 stop it right there.

17 BY MR. SPITLER:

18 Q. This is the start of My Side of Town. Is there anything
19 that gives you an indication of when that was produced?

20 A. No.

21 Q. No.

22 MR. SPITLER: Oh, and -- okay, you can take that
23 down. Thank you.

24 BY MR. SPITLER:

25 Q. And you told us that you never contacted @A_KAM_VISUALS

1 to try to determine when they -- when that was shot and when
2 it was produced, correct?

3 A. I did not.

4 MR. SPITLER: Okay. That's all I have. Thank you
5 very much.

6 THE COURT: Any redirect?

7 MR. PARISI: Yes, Your Honor, but may I have one
8 moment, please?

9 THE COURT: Sure.

10 **EXAMINATION BY MR. PARISI (REDIRECT):**

11 Q. Lieutenant, Mr. Spitler asked you about the diff -- what
12 would be a rap lyric versus some other statement, and I
13 believe you said a post can be both a rap lyric and something
14 relevant to your investigation. Do you recall saying that?

15 A. Yes.

16 Q. Can you explain what you mean?

17 A. Yes. It's possible that the rap lyric could be used to
18 describe a feeling that this person has, if he wants to maybe
19 intimidate someone who he has a, you know, a beef with or
20 some type of argument.

21 I believe Mr. Spitler mentioned that anyone could discuss
22 a thought or make a post or a song lyric, and it could be
23 interpreted both ways.

24 Q. And in your experience, do people -- well, with respect
25 to the YouTube videos, those are posted, as you said, for the

1 public, anyone to see, correct?

2 A. Correct.

3 Q. And do you have experience with individuals that are
4 posting that are friends on social media with rival gang
5 members?

6 A. Yes.

7 Q. And do you have experience with why individuals would be
8 friends with rival gang members in social media?

9 A. Yes.

10 Q. What is that?

11 A. To communicate and an attempt to intimidate or throw
12 shade or try and criticize or knock down this person if they
13 have any type of, again, beef or dispute between them.

14 Q. And Mr. Spitler asked you about whether an individual
15 filed a criminal complaint related to harassment for -- with
16 respect to the videos. Do you have experience with
17 individuals of rival gang members, whether they are likely to
18 talk to the police about whether they feel intimidated?

19 A. It is an incredibly rare occurrence for that to happen.

20 Q. Why is that, based on your experience?

21 A. There's a mantra that exists of no snitching and not
22 cooperating with the police across all -- all forms of, it
23 seems, criminal organizations or those involved in criminal
24 activity.

25 MR. PARISI: Can we pull up Government Exhibit 111,

1 please?

2 THE COURT: In evidence?

3 MR. PARISI: In evidence, yes. Page 1.

4 BY MR. PARISI:

5 Q. We looked at this previously on your testimony from this
6 morning and from last week. This picture, does this appear
7 to be a rap lyric?

8 A. No.

9 Q. And is Crossman where the store is, is that located in
10 the Towne Gardens?

11 A. It is not.

12 Q. Is there a group within the City of Buffalo that claims
13 the area of Genesee and Crossman?

14 A. Yes.

15 Q. What is that group?

16 A. The Humason Crew.

17 Q. Are they -- is their location where they operate within
18 the Towne Gardens, the Humason Crew?

19 A. No.

20 Q. Are they on the map where you indicated to us earlier, on
21 the northeast part of the city?

22 A. Yes.

23 MR. PARISI: Can we pull up Government Exhibit --

24 BY MR. PARISI:

25 Q. And I'm sorry, who were the two individuals that we saw

1 in this photograph, Government Exhibit 111?

2 A. Dalvon Curry and Dario Tanner.

3 Q. And which one is on the left?

4 A. Dalvon Curry.

5 MR. PARISI: Can we pull up 112.1, please?

6 BY MR. PARISI:

7 Q. Do you recall testifying about 112.1?

8 A. Yes.

9 MR. PARISI: And if we can go to the second page.

10 And if we can go to the -- zoom in on the bottom three.

11 BY MR. PARISI:

12 Q. Do we see -- you see those three that we pulled out, the
13 bottom three posts from that conversation?

14 A. Yes.

15 Q. And the first one says, just shut up, you talking about
16 nothing little Jaquan?

17 A. Yes.

18 Q. And then there's the let's link?

19 A. Yes.

20 Q. And then can you read that last one, please?

21 A. @Jaquann10, want me to come to yo house cuz these bitches
22 be talking, or come on the West on Potomac between Richmond
23 and Baynes.

24 Q. Does that appear to be a rap lyric to you?

25 A. No.

1 MR. PARISI: Can we take that down, please?

2 BY MR. PARISI:

3 Q. Mr. Spitler asked you about other individuals, or other
4 individuals within the City of Buffalo who post rap videos on
5 social media --

6 A. Yes.

7 Q. -- and you said you've viewed dozens of those?

8 A. Yes.

9 Q. Can a person be an aspiring rapper and also involved in
10 gang activity?

11 A. Yes.

12 Q. And, in fact, do you see that in many of the videos that
13 you watch?

14 A. Yes.

15 MR. PARISI: Nothing further, Your Honor.

16 **EXAMINATION BY MR. SPITLER (RECROSS):**

17 Q. Lieutenant, are you trying to tell the jury that every
18 rapper is a gang member?

19 A. No.

20 Q. Okay. And every gang member isn't a rapper, are they?

21 A. No.

22 Q. No. Okay. I didn't think you were, I just wanted to
23 make sure.

24 That photograph of my client and Mr. Tanner standing in
25 front of that store, is -- is that illegal?

1 A. No.

2 Q. And -- and the reason that -- that people who are
3 associated with one group and people associated with another,
4 as Mr. Parisi wants to call them gangs, the reason they're
5 friends is so they can -- I think you indicated kind of punk
6 one another, jump on one another, embarrass one another, call
7 one another out, correct?

8 A. Yes.

9 Q. Okay. And the -- the fact that -- so you were -- you
10 would be aware, for instance, if members of one group and
11 members of what would be considered an opposing group,
12 whether or not they would be friends? You would know that,
13 right? Because you were friends -- you had gotten on friends
14 of both sides, correct?

15 A. Yes.

16 Q. Okay. And the -- when -- when they -- when they do that,
17 when they -- they -- they -- they go at one another verbally
18 through the exchange of Tweets and stuff, that's important to
19 you, right?

20 A. Yes.

21 Q. Okay. Because you're trying to determine, is there going
22 to be some sort of criminal activity Down The Way --

23 A. Correct.

24 Q. -- correct? What was the date of that --

25 MR. SPITLER: Can we bring up, I think it was 12. --

1 no, the photograph outside Crossman, Genesee and Crossman.

2 MR. PARISI: 111.

3 MR. SPITLER: 111, thank you.

4 BY MR. SPITLER:

5 Q. What's that date, 3/8/14, mean?

6 A. That's the date it was posted.

7 Q. Okay. And what occurred on 3/8/14 after that was posted?

8 Was there -- was there a problem? Was there a fight? Was
9 there a shooting? Was there something?

10 A. Nothing comes to my mind.

11 MR. SPITLER: That's all I have, thanks.

12 Thank you. You may take that down.

13 THE COURT: Anything more?

14 MR. PARISI: No, Your Honor.

15 THE COURT: Okay. You can step down, sir. Thank you.

16 THE WITNESS: Thanks.

17 (Witness excused at 10:13 a.m.)

18 THE COURT: Call your next witness, please.

19 MR. MOLISANI: Your Honor, the government's next
20 witness is Buffalo Police Officer Timothy O'Neill.

21

22 **T I M O T H Y O ' N E I L L**, having been duly called and
23 sworn, testified as follows:

24 MR. MOLISANI: If I may?

25 THE COURT: You may.

1 **EXAMINATION BY MR. MOLISANI (DIRECT) :**

2 Q. Good morning, Officer.

3 A. Good morning.

4 Q. Officer O'Neill, where do you work?

5 A. Buffalo Police Department.

6 Q. And what is your title or position within the Buffalo
7 Police Department?

8 A. Patrol officer.

9 Q. And how long have you been a patrol officer with BPD?

10 A. 25 years.

11 Q. And prior to being employed by the Buffalo Police
12 Department, do you have any prior law enforcement experience?

13 A. Five and a half years as a municipal housing officer.

14 Q. And can you tell us what municipality you were working
15 with?

16 A. Municipal housing was run by HUD.

17 Q. Was that in the City of Buffalo?

18 A. Yes, it was.

19 Q. And with respect to your work within the housing unit,
20 what areas of the city were you assigned to patrol?

21 A. Mainly the housing projects throughout the city. I
22 believe there was 27 of them.

23 Q. Now, subsequently, you were brought on to the Buffalo
24 Police Department?

25 A. Yes.

1 Q. And where are you currently assigned?

2 A. Traffic division right now.

3 Q. And prior to being assigned to the traffic division, what
4 was your assignment?

5 A. Bravo District.

6 Q. That's B, Bravo District?

7 A. Correct.

8 Q. And what, generally speaking, what area of the City is
9 Bravo District --

10 A. Downtown. It goes up to West Ferry, borders on Jefferson
11 Avenue, to -- south to Main Street along the arena.

12 Q. And during your time assigned to Bravo District, what
13 were some of your duties and responsibilities as a patrol
14 officer?

15 A. Radio dispatch and radio-to-patrol duties.

16 Q. Would you respond to 911 calls?

17 A. Yes.

18 Q. And were you also -- did you patrol in a marked police
19 unit?

20 A. Yes, I did.

21 Q. Now, Officer, based on your experience within Bravo
22 District and when you were assigned to the housing unit, were
23 you familiar with an area of the Towne Garden apartment
24 complex?

25 A. Yes, I am.

1 Q. Where is that located?

2 A. That's located east on Jefferson Avenue -- let's see,
3 north on William, the west side would be Hickory, and the
4 south side of that would be Clinton Street.

5 Q. So it's a complex bounded by those streets?

6 A. Yes.

7 Q. Were you familiar with some of the businesses and
8 properties surrounding the apartment complex itself?

9 A. Yes, I was.

10 Q. What are some of those properties surrounding the Towne
11 Garden apartments?

12 A. On William by Jefferson, there is a mall there. Inside
13 there was a supermarket, IGA, a couple other smaller
14 businesses. And on the corner in a stand-alone building was
15 a McDonald's restaurant.

16 Q. Now, can you estimate approximately how many 911
17 dispatches you responded to the Towne Garden apartments
18 for --

19 A. Hundreds.

20 Q. -- in the course --

21 A. Hundreds.

22 Q. -- of your career?

23 A. Hundreds.

24 Q. Have you also responded and patrolled the IGA plaza,
25 McDonald's and some of those surrounding streets?

1 A. Yes, I have.

2 Q. What types of calls did you respond to most frequently in
3 and around the Towne Gardens over the course of your 30-year
4 police career?

5 A. Domestics, assaults, criminal trespassing, drug-related
6 calls, drug sales. Those are the main ones.

7 Q. Did you ever respond to shots-fired calls in those areas,
8 as well?

9 A. Yes, I have.

10 Q. Now, based on your experience, what are some of the
11 unique challenges to policing the Towne Gardens and those
12 surrounding properties?

13 A. Towne Gardens is hard to get into. The outside is
14 bordered by a few parking lots. You cannot enter in the
15 Towne Gardens easily. You have to get out on foot. You have
16 to park your vehicle and make your way through the place.

17 The walkways are not easily recognizable. They're not
18 marked well.

19 And also, when we respond over there, we seem to run into
20 lookouts quite often when we show up that announce our
21 presence.

22 Q. And when you refer to lookouts, can you describe how you
23 experienced that sort of situation, that difficulty?

24 A. Any time, no matter what call we showed up over in Towne
25 Gardens, as soon as we got out of the car, we would hear the

1 hoots and hollering and yelling 5-0 and everything else, just
2 alerts to let them know we were on scene.

3 Q. And with respect to the buildings themselves, did you run
4 into problems with how those buildings -- the layout of those
5 buildings?

6 A. The layouts were difficult because they had front and
7 back doors. They're supposed to be locked, but they never
8 were. If we approached the front door of the building and
9 were going in to check out the building for criminal mischief
10 or criminal trespassing, most of the people saw us coming,
11 they would flee out the back door.

12 Q. And with respect to the configuration of the buildings on
13 the grounds, how did they present -- the configuration, how
14 did that present a problem for you in policing the Towne
15 Gardens?

16 A. Well, like I said, you couldn't take a patrol car in
17 there, so you were always on foot. The configuration was
18 very confusing and poorly marked. The buildings were
19 three-floor walkups, almost all of them, and -- with various
20 apartments on three floors, but a lot of them were vacants
21 that we could not enter. So --

22 Q. With respect to the sight lines when you were inside of
23 the Towne Gardens, did you have difficulty when you were
24 attempting to pursue someone within the Gardens to maintain
25 visual contact with them?

1 A. Yeah. There are so many that's -- going around corners,
2 you can lose someone in a short chase because once they ran
3 around the corner, half the time they had the lead on you,
4 you didn't know which way they were going. You don't know if
5 they were entering a building, if they were east, west,
6 north, south, it was impossible unless you had a large
7 contingent of officers.

8 Q. Could it be disorienting when you were pursuing someone
9 within the confines -- within the courtyards of the
10 buildings?

11 A. Absolutely, because every building looked the same.

12 Q. Now, with respect to some of those properties surrounding
13 the Towne Garden apartments, you indicated that you did
14 patrol the IGA plaza. What was one of the main problems that
15 existed at the IGA plaza?

16 A. Continuous and consistent calls of drug sales.

17 Q. And when you would respond to those types of calls, what
18 about the physical setup of the plaza created difficulties
19 for trying to police those narcotics calls?

20 A. Right at the corner at the IGA building at the front,
21 there was a causeway, a breezeway that actually went through
22 the middle of the plaza, and it emptied out into Towne
23 Gardens on the back side. So, when we pulled up, we were --
24 if we pulled up on William Street, they immediately saw us
25 and they would scoot right down the alley into the Towne

1 Gardens.

2 Q. And were there other entry points around that plaza that
3 allowed individuals to run or flee right into the Towne --

4 A. Yes, there was.

5 Q. -- Garden apartment complex?

6 A. Yes, there was.

7 Q. Now, I know that you patrolled that area for a number of
8 years. At some point, was an effort made to curtail the
9 flight of individuals through that breezeway?

10 A. Yes, they did. They actually -- that alleyway that I'm
11 talking about that goes through the center of the plaza that
12 empties into the Towne Gardens, at the end of it, the back
13 end of it, they constructed a cinderblock wall approximately
14 10 feet high so it could stop anyone from going through
15 there.

16 Q. Now, Officer, I want to direct you to around 2015. Were
17 you aware of an initiative that was implemented around that
18 time to help combat some of the problems that you were facing
19 in the Towne Garden area?

20 A. Yes, there was a federally subsidized grant, it was
21 called a GIVE Grant.

22 Q. What does GIVE stand for?

23 A. Gun-Involved Violence Elimination.

24 Q. And what was the purpose of the GIVE Grant? What were
25 some of the purposes of the GIVE Grant?

1 A. We were to target areas where a lot of gun violence or
2 gun-related calls were coming out, which happened to be Towne
3 Gardens was one of our main ones.

4 Q. And with this -- this funding, what were some of the
5 objectives that the GIVE Grant sort of laid out?

6 A. We would take normally four officers and go into Towne
7 Gardens as a unit. We did community outreach. We would talk
8 to the neighbors. We would try to determine who was the
9 problem groups, who could be suspected drug dealers.

10 We also did vehicle patrol, and we tried to eliminate the
11 pass -- they had no-trespassing signs throughout the complex,
12 they wanted us to enforce those, also.

13 Q. Now, as part of this GIVE funding, were you provided
14 funds to allow for additional patrols within the Towne
15 Gardens?

16 A. Yes, we were.

17 Q. And how often would these supplemental patrols visit the
18 Towne Gardens?

19 A. Usually twice a week for four hours at a time. Sometimes
20 there was a third tour during the week, but it was usually
21 maintained twice a week.

22 Q. And you indicated during these tours, there would be four
23 officers that would proceed on foot through the Towne
24 Gardens?

25 A. Correct.

1 Q. Now, how many officers, aside from you, were involved in
2 providing manpower for these additional patrols in the Towne
3 Gardens?

4 A. It was more than 12. It could've been 12 to 16 officers.

5 Q. And these patrols were in addition to regular patrols and
6 calls for service within that area?

7 A. Correct.

8 Q. Now, during these tours, would you speak with residents
9 of the Towne Garden apartments?

10 A. Yes, we would.

11 Q. What were their chief complaints?

12 A. Drug sales, that was always the first thing. And
13 criminal trespass, people in the complex that didn't belong.

14 Q. Did the residents that you spoke with express gratitude
15 for your efforts?

16 A. Yes, they did.

17 Q. You indicated before that part of what you were doing
18 with these patrols was attempting to identify individuals
19 that were involved in narcotics trafficking and things of
20 that nature, illegal activity.

21 What were some of the techniques that you would use in
22 order to accomplish that objective?

23 A. Well, we would park in various locations and try to sneak
24 our way in. That wasn't too successful because they had so
25 many people in courtyards.

1 We did do foot patrols on a regular basis. The vehicle
2 patrols were more designed to try to catch vehicles that were
3 coming from the outside in to the complex.

4 Q. And with respect to identifying individuals you
5 encountered, what was the procedure that you would follow
6 when you interacted with individuals that you identified that
7 could be involved or were loitering or involved in narcotics
8 activity?

9 A. When we were -- because of the criminal trespassing that
10 was so prevalent, we were given the okay to stop different
11 groups to identify if they were actually residents or not.
12 So we would actually stop groups at a time and ask for
13 identification and try to confirm if they were residents or
14 not.

15 We also had a resident log through our lieutenant that
16 listed everyone's address and who was living in there.

17 Q. So you were able to compare the IDs that you received
18 from the individuals you encountered with the roster of
19 residents who actually resided within the Towne Gardens?

20 A. Yes.

21 Q. Now, would you always obtain ID from the individuals you
22 spoke with?

23 A. We asked everyone. It wasn't always produced, but yes,
24 all the time we would ask for identification.

25 Q. And would you compare -- would you look at that

1 identification and compare it with the person that was before
2 you?

3 A. Yes.

4 Q. Now, as part of this grant and part of those additional
5 patrols, did you document these efforts that you made?

6 A. Yes, we did.

7 Q. Did you also document the individuals that you
8 encountered during these tours?

9 A. Always.

10 Q. Did you produce, or fellow officers you were working
11 with, produce reports related to those various tours?

12 A. Yeah, they were car detail reports.

13 Q. Okay. I'd like to go over three of these detail car
14 reports with you at this time. I'm going to begin with
15 directing your attention to November 19th, 2015. Do you
16 recall if you were working in your capacity as a Buffalo
17 police officer on that date?

18 A. Yes, I was.

19 Q. Were you in a uniform, as you are today?

20 A. Yes, I was.

21 Q. And were you involved in that supplemental patrol that
22 was -- provided funding by the GIVE Grant in the Towne
23 Gardens that day?

24 A. Yes, I was.

25 Q. Do you recall what officers you were working with?

1 A. I believe on that day it might have been Mark Tripp and
2 Marlene Mott.

3 Q. And on November 19th, 2015, did you encounter any
4 individuals within the Towne Garden plaza loitering?

5 A. Yes, we did.

6 Q. Do you recall who those individuals were?

7 A. Yes, I do.

8 Q. Who were they?

9 A. Dalvon Curry, Markel Green, and Tony Purdue.

10 Q. And did you verify Dalvon Curry's birth date?

11 A. Yes, I did.

12 Q. And what was that?

13 A. 4/21/96.

14 Q. Was that based off of identification that he provided
15 you?

16 A. Yes, it was.

17 Q. And did you review the identification he provided you and
18 compare it with a person that you were actually speaking
19 with?

20 A. Yes, we did.

21 Q. Now, when you spoke with those three individuals, what
22 did you tell them?

23 A. Well, they knew they weren't supposed to be loitering.
24 We always advised them of that. In most cases, we checked
25 them with outstanding warrants, and if everything was okay,

1 we usually would sent them on their way.

2 Q. Is that what you did on that occasion?

3 A. Yes, we did.

4 Q. Now, were any of those individuals people that you knew
5 to sell marijuana, based on previous encounters?

6 A. They were all known -- they were all suspected drug
7 dealers.

8 Q. Officer O'Neill, I'd like to direct your attention to
9 November 29th, 2015. Were you again working in your capacity
10 as a Buffalo police officer on that date?

11 A. Yes, I was.

12 Q. And were you involved in the detail related to the GIVE
13 Grant?

14 A. I was.

15 Q. On that date, were you in police uniform, as you are
16 today?

17 A. Yes.

18 Q. And did you encounter any individuals in the area of
19 401 William Street?

20 A. Yes, I did.

21 Q. Where is 401 William Street in relation to the Towne
22 Garden apartments?

23 A. If you're on William Street looking into the plaza, it's
24 the first house on the right next to the parking lot.

25 Q. So it's right beside the Towne Garden plaza?

1 A. Right next to it, yes.

2 Q. And who were the individuals that you encountered in the
3 vicinity of 401 William?

4 A. It was Dalvon Cook and Hakeem Humphries.

5 Q. You said Dalvon Cook, did you misspeak?

6 A. Or, I'm sorry, Dalvon Curry, I'm sorry.

7 Q. And, again, did you verify Dalvon Curry's date of birth?

8 A. Yes, I did.

9 Q. And verify the identification he provided you?

10 A. Yes, I did.

11 Q. Verifying that the person you were speaking with was the
12 same person who was on that date?

13 A. Yes, it was.

14 Q. Now, was that location, 401 William, was that a problem
15 location?

16 A. Yes, it was. It was a -- we received complaints there.
17 And a lot of times when we scattered the gangs and the groups
18 in front of the IGA store inside that mall, they would mosey
19 over to the house and sit on the front porch.

20 Q. At 401 William?

21 A. Yes.

22 Q. And you indicated that Dalvon Curry was with another
23 individual by the name of Hakeem Humphrey?

24 A. Yes.

25 Q. And did you verify an identification for Hakeem Humphrey,

1 as well?

2 A. Yes, we did.

3 Q. What did you do with those individuals after you
4 interviewed them?

5 A. We again checked for warrants and sent them on their way
6 after they -- we found out or verified they had no
7 outstanding warrants.

8 Q. And do you recall Dalvon Curry providing you some
9 information that you did not find reliable on that occasion?

10 A. I don't remember what it was, but I actually put it in
11 the report that he -- we had caught him in a lie, but we sent
12 him on his way anyways.

13 Q. Do you recall what he lied about?

14 A. I wish I could, but I don't remember.

15 Q. Now Officer, I'd like to direct your attention to
16 January 25th, 2016. Do you recall if you were working as a
17 police officer on that date in a marked -- in police uniform?

18 A. Yes, I was.

19 Q. And were you again working detail related to the Towne
20 Gardens?

21 A. Yes.

22 Q. On that date, January 25th, 2016, do you recall
23 encountering a group of individuals in the vicinity of
24 26 Sussex Court?

25 A. Yes.

1 Q. Where is 26 Sussex Court?

2 A. It's inside the Towne Gardens, hard to explain, but it's
3 off the back of Byrd Way, which is a road that runs along the
4 back side, along the -- the rear of the plaza.

5 Q. And who did you interact with at 26 Sussex Court?

6 A. Dalvon Cook, Dario --

7 Q. Did you misspeak again? You said Dalvon --

8 A. I don't know why I keep saying that, Dalvon Curry.

9 Q. He's on the Minnesota Vikings.

10 A. It's Curry. Dario Tanner, Laron Watkins, and Steven
11 Major.

12 Q. And as you did on those prior occasions, did you verify
13 the identities of those individuals by looking at licenses
14 and other identifications like that?

15 A. We did, and we knew a few of them already just by sight.

16 Q. And were you aware of the affiliation that those
17 individuals had with a gang in the area?

18 A. They were all on our gang board. I think it was BFL gang
19 out of Towne Gardens.

20 Q. And when you initially approached that group of
21 individuals, were there actually other individuals that were
22 with them prior to the time that you spoke with --

23 A. Yeah, when they saw us coming, two quickly ran into the
24 building, and the third ran the opposite direction and fled
25 into another building.

1 Q. After you conducted those interviews, after you verified
2 identification for those four individuals, did you
3 subsequently speak with another individual in close proximity
4 to 26 Sussex Court?

5 A. Yes, we did, we encountered Hakeem Humphries a short time
6 later.

7 Q. And with respect to the information that you've testified
8 about today, did you memorialize those observations within
9 the detail car reports that were completed?

10 A. Yes, we did.

11 Q. Now, how long did GIVE funding provide for the additional
12 foot patrols?

13 A. I think it was just short of four months.

14 Q. And at the conclusion of those additional foot patrols,
15 did criminal activity persist in the Towne Gardens?

16 A. Yes, it did.

17 Q. Officer, at this time, I'd like to show you what's in
18 evidence as Government Exhibit 46.110.

19 MR. MOLISANI: Ms. Rebisz, can you please pull that
20 up? So just for the clarity of the record, 46.110A is what is
21 displayed to the jury, as well as the witness.

22 BY MR. MOLISANI:

23 Q. Officer O'Neill, you earlier testified that one of the
24 difficulties presented by the Towne Garden apartments in
25 terms of policing was the accessibility of the Towne Gardens.

1 Would you mind marking for us the various ways that you could
2 enter the apartment complex by vehicle?

3 A. Yeah.

4 Q. I believe you can touch the screen.

5 A. Okay, but can you see it though?

6 THE COURT: It will show it up on the screen.

7 THE WITNESS: Okay.

8 THE COURT: Just touch it and you'll see.

9 THE WITNESS: Okay. All right. We normally would
10 come off Jefferson by vehicle, come into Byrd Way. That ran
11 along the back of the plaza, which is right here by Family
12 Dollar.

13 We also came in off Hickory Street and from McNeeley
14 Way. Those are our quickest ways to enter into the middle of
15 the buildings.

16 The other ways would be off of Clinton Street, and
17 these are the main parking lots. But you would have to stop
18 and park your car at these points and make your way in.
19 That's where we had a lot of problems because there were so
20 many lookouts, and --

21 BY MR. MOLISANI:

22 Q. And just so the record is clear, you've marked a line
23 leading in from Jefferson Avenue, west on Byrd Way. You've
24 also indicated from Hickory Street east on McNeeley Way?

25 A. Correct.

1 Q. And then at the bottom of the map, you've identified off
2 of Clinton Street what appear to be three parking lots?

3 A. Three large parking lots, and that's where you had to
4 abandon your vehicle to get into these locations.

5 Q. And does 46.110A show how closely configured a number of
6 these buildings are?

7 A. Yes. And then besides that, I mean, they all look
8 identical.

9 Q. And you indicated, as well, that within the Towne Garden
10 apartments where these walkways are, the buildings are -- the
11 signage for the buildings are not well marked?

12 A. No, it's -- there are some that don't even have the
13 signs.

14 Q. Now, does this Exhibit 46.110A, does it also depict the
15 IGA plaza or the Towne Garden plaza?

16 A. Yes, it does.

17 Q. And can you see that breezeway that you were talking
18 about --

19 A. Yep.

20 Q. -- that runs directly in the middle of the plaza?

21 A. Yes, I can.

22 Q. Can you make a mark there to show us where that is?

23 MR. MOLISANI: And just so the record is clear,
24 Officer O'Neill has made a mark that runs from sort of the
25 middle of where it's marked Hamaya Food Corporation down over

1 the M in Family Dollar, where that's marked off.

2 BY MR. MOLISANI:

3 Q. And at the termination of that line that you drew, below
4 Family Dollar, is that where the wall was installed to
5 prevent people from fleeing through the plaza back into the
6 Towne Gardens?

7 A. That's correct.

8 Q. Now, in addition to that breezeway, is there also another
9 pathway -- well, let me -- let me retract that question and
10 ask you a new one.

11 Can you see where -- can you see where 401 William is on
12 this map? And you've marked the first house to the left of
13 the parking lot --

14 A. Yes.

15 Q. -- at 46.11A, kind of at the top middle of the map?

16 A. Correct.

17 Q. And was there a pathway that led directly into the Towne
18 Gardens that was another one within the plaza?

19 A. Yep, alongside 401, and went right into Towne Gardens.

20 Q. And just so the record is clear, Officer O'Neill, you've
21 made a line from -- essentially under where it says William
22 Street in the middle top part of the map directly down the
23 left side of the plaza and down into Byrd Way?

24 A. Correct.

25 MR. MOLISANI: Thank you, Officer O'Neill, I have no

1 further questions for you at this time.

2 THE COURT: Mr. Spitler?

3 MR. SPITLER: Thank you, Judge.

4 **EXAMINATION BY MR. SPITLER (CROSS):**

5 Q. Officer O'Neill, good morning.

6 A. Good morning, sir.

7 Q. You indicated that on three -- at least on three
8 occasions, you encountered my client, Dalvon Curry, and made
9 note of it, correct?

10 A. Correct.

11 Q. Okay. And you indicated you sent him on his way, he
12 didn't live in Towne Garden?

13 A. He had an outside address, I believe it was listed
14 Madison Street, I believe.

15 Q. Okay. And that would be -- and that would be on, like,
16 whatever ID, a driver's license, a student, whatever ID he
17 presented had an address on it, correct?

18 A. Correct.

19 Q. Okay. And you had that log of who the -- who the
20 residents were in Towne Garden, and he -- his name didn't
21 appear on that log, did it?

22 A. Correct.

23 MR. SPITLER: Okay. That's it. Thank you, Officer.

24 THE WITNESS: Okay.

25 THE COURT: Anything more?

1 MR. MOLISANI: No further questions, Your Honor.

2 THE COURT: Okay. You can step down.

3 (Witness excused at 10:43 a.m.)

4 THE COURT: Okay. Ladies and gentlemen, we're going
5 to take our mid-morning break now. Please remember my
6 instructions about not discussing the case and not forming any
7 conclusion.

8 We'll see you back here at about 5 minutes to 11 or
9 so. Thanks.

10 (Jury excused at 10:44 a.m.)

11 THE COURT: Okay. First of all, anything we want to
12 put on the record now?

13 MR. PARISI: Your Honor, there are two legal issues
14 that I identified earlier, but nothing related to these
15 witnesses.

16 MR. SPITLER: Nothing related to the witness.

17 THE COURT: Okay. Now the next witness will be a
18 witness that we have the issue of the statements coming up?

19 MR. PARISI: Yes, Your Honor.

20 THE COURT: Okay. So, let's talk about it.

21 MR. PARISI: Your Honor, essentially, the next
22 witness is Hakeem Humphrey. And Mr. Humphrey is expected to
23 testify relevant to what we're discussing here, three
24 different areas. The first is a statement made by Maurice
25 Rice, that Maurice Rice was responsible for the shooting of

1 Kameron Rashada, who was an associate of a rival gang that I
2 believe we've already heard about, PBC in the uptown area.

3 The second area with respect to Mr. Humphrey is, he
4 will describe after the shootout with Jaquan Sullivan, he will
5 describe statements made to him by the defendant. And then he
6 will also describe that he observed the firearm that was used
7 in that shootout, or that he believed was used in the shootout
8 with another individual, Laron Watkins. And then subsequently
9 learned from an individual member of the enterprise that that
10 firearm was buried in the Towne Gardens. He will not be able
11 to identify the person who actually made that statement to
12 him, other than that he remembers that it was a member of what
13 will be the enterprise.

14 And then the third area was, Mr. Humphrey was
15 assaulted on June 19th of 2019 by Michael Walker and Kareem
16 Pryor on Genesee Street. Now, we've identified this issue.
17 This is outside the time period of the indictment, however
18 Mr. Humphrey was assaulted for two reasons as he was expected
19 to testify: the first being that Michael Walker confronted him
20 about talking to law enforcement and cooperating with law
21 enforcement with respect to what he knew about, as
22 Mr. Humphrey is expected to testify, Larell and them, meaning
23 in his experience Larell Watkins and Larell Watkins' friends;

24 And then also Hakeem Humphrey -- Michael Walker
25 suspected him and confronted him about possibly killing a

1 person named Alvin McDowell who died a few hours after Xavier
2 Wimes the morning of January 1st, 2017, which Mr. Humphrey
3 vehemently denied.

4 So with respect to the coconspirator statements we've
5 outlined in our pretrial memo, but essentially the government
6 is moving to offer these under 801(d)(2)(E) and that these
7 statements will be admitted against the accused, the
8 defendant -- because the government is able to show by a
9 preponderance of the evidence that a conspiracy existed, and
10 both the defendant and the declarant of that statement were a
11 member of the conspiracy. So in this case, it would be the
12 defendant and Maurice Rice, or the defendant and the person
13 that made the statement about the disposition of the firearm.

14 Specifically, the government has elicited proof in
15 the form of social media and music videos that demonstrate
16 that the defendant claims affiliation with BFL. Maurice Rice
17 is prominently displayed in the BFL rap videos, as well.

18 Mr. Humphrey is expected to testify that Maurice
19 Rice, the defendant, and other individuals were members of the
20 enterprise known as BFL and CBL.

21 Mr. Humphrey is going to describe how BFL and CBL
22 operated, how CBL was generally just a little bit older than
23 the BFL members, but how the two units operated as one gang.

24 Mr. Humphrey is expected to testify to his
25 observations about individuals that supplied narcotics from

1 CBL and BFL, and how they distributed narcotics together in
2 the Towne Gardens.

3 THE COURT: Was he a member of these gangs?

4 MR. PARISI: He is going to testify that he was an
5 associate of the gangs, he was not a member.

6 He will give testimony that he was shot at by Jaquan
7 Sullivan in the Towne Gardens, and he left and he went with
8 various individuals including Larell Watkins, Maurice Rice,
9 Miquise Jones, and Shameris Washington, to go look for Jaquan
10 Sullivan to retaliate in Jaquan's Sullivan neighborhood, and
11 they engaged in a shootout with Jaquan Sullivan, and then he
12 returned.

13 So other witnesses are expected to testify in this
14 case, cooperating witnesses, who were members of the
15 organization, and will testify -- and I'm sorry, Hakeem
16 Humphrey will testify that Dalvon Curry is a member of the BFL
17 part of the organization.

18 Other witnesses are expected to testify in this trial
19 as to how the organization operated specifically with respect
20 to the narcotics operation, that Shawn Woods was the primary
21 drug supplier for -- well, essentially the older members like
22 CBL were the primary drug suppliers, and then the younger
23 members of the BFL were the primary people who sold it to the
24 users and also committed the shootings on behalf of the
25 enterprise.

1 So the government is showing through the proffer of
2 evidence of the evidence that's already in and the evidence
3 that's expected to come during the course of the trial that
4 there is a preponderance of the evidence that a conspiracy
5 existed, and both this defendant and the individuals who made
6 those statements, that being Maurice Rice, the individual
7 associated with the enterprise concerning the disposition of
8 the firearm, and Michael Walker and the June 9th, 2019
9 assault.

10 Michael Walker will also be identified as a member of
11 the organization who supplied narcotics to the individuals who
12 sold to drug users by Mr. Humphrey.

13 THE COURT: Okay. So let's break it down a little
14 bit. The Maurice Rice statement, I understand.

15 How do I know that the second statement, that is that
16 the gun was buried -- we don't know who made that statement.
17 How do I know that was made by a coconspirator?

18 MR. PARISI: Mr. Humphrey will testify that although
19 he doesn't remember the person, he remembers that person was a
20 member of the enterprise.

21 THE COURT: Okay. And how were both those
22 statements, the Rice statement and the buried gun statement,
23 in furtherance of the conspiracy?

24 MR. PARISI: With respect to the Rice statement and
25 other statements that will come up during the course of this

1 trial, it is important to note who the rivals are for the
2 enterprise. It is important for you to know, number 1, to
3 post things on social media about the rival enterprise for
4 your own protection so that if a car or an individual is seen
5 driving through the Towne Gardens, or if you're out in the
6 community and you see a rival, you know to be careful.

7 Or, also, when you leave the Towne Gardens and you're
8 driving for some reason into the rival's neighborhood, you
9 have to be armed to go into that rival's neighborhood in case
10 you see that person.

11 With respect to the disposition of a firearm, the
12 members are going to testify that the firearms were generally
13 community guns that everybody could use. And so each
14 individual member needed to know the disposition of what gun,
15 so if they picked up a gun to use, they knew that that gun had
16 a body on it, that gun was just used in a shooting where
17 nobody got hit, or that gun was not used yet. So they needed
18 to know what happened to each of those guns so that if they
19 picked up a gun to use, they would know whether that gun was
20 used in a homicide.

21 THE COURT: Okay. And is Mr. Humphrey going to
22 testify to these things? Is that foundation coming in through
23 Mr. Humphrey?

24 MR. PARISI: Mr. Humphrey is going to testify to most
25 of those things.

1 THE COURT: Okay.

2 MR. PARISI: And then other witnesses will testify
3 later to all of those things.

4 THE COURT: Okay. So let me ask first, Mr. Spitler,
5 and we're going to get to the statements outside the time
6 period of the conspiracy in a second. But with respect to
7 what we've talked about so far, do you have any objection
8 conceptually to what he's saying?

9 I understand you may have objections to individual
10 questions.

11 MR. SPITLER: Right.

12 THE COURT: But let me hear you if you have any
13 argument you want to make in opposition to what he's saying as
14 a general concept.

15 MR. SPITLER: Well, Judge, as I read 801(d)(2)(E), it
16 was made by the parties, coconspirators, during and in
17 furtherance of the conspiracy. And I, again, why is the
18 shooting of a member of PCB considered in furtherance of the
19 conspiracy?

20 THE COURT: Well, the statement has to be made in
21 furtherance of the conspiracy, right? It's the -- it's the
22 statement that's made in furtherance of the conspiracy. So
23 the statement that's -- and the statement is -- tell me again
24 what the statement is?

25 MR. PARISI: The statement with respect to the

1 shooting of Kameron Rashada, Maurice Rice will claim that he
2 shot Kameron Rashada and that they -- and Hakeem Humphrey will
3 testify that PBC was a rival gang of BFL.

4 MR. SPITLER: But what I don't understand is -- and I
5 understand the concept of coconspirator making a statement,
6 and I -- and I certainly have a problem with not being able to
7 cross-examine Mr. Rice as to that.

8 When Mr. Humphrey says it, of course, the question
9 I'm going to ask is how do you -- how do you know that Rice
10 was telling you the truth? And he's going to say I don't
11 know. And I have no -- the problem is, is I've lost
12 confrontation, the right of confrontation.

13 And, Judge, I well understand the coconspirator
14 statement, I understand that exception. But respectfully,
15 Mr. Rice would be an available witness to the government.
16 He's an available witness. He's -- he was -- as we all
17 know --

18 THE COURT: Yeah, how is the statement in further --
19 how is Rice's statement that I shot so-and-so in furtherance
20 of the conspiracy?

21 MR. PARISI: Well, in the ways that I've already
22 described. Number 1, they have to know that the shooting
23 occurred so that they know what areas of the city to avoid.
24 And also, who to be careful of, who to look out for.

25 And also, as we'll see in the social media posts, as

1 we've seen in some social media posts and will see in more
2 social media posts, it increases the status, which is part of
3 what the government has to prove. An individual who shoots
4 another individual increases the respect and the status within
5 the gang, because that person is then known as a shooter, so
6 that if I have a beef, I know I can go to, for instance,
7 Maurice Rice in this case, and Maurice Rice will be able to
8 handle that. So individuals within the enterprise need to
9 know people who deal drugs and people who commit shootings so
10 that they know the individuals to go to if there's a problem.

11 THE COURT: Okay. Okay. Let's talk -- anything else
12 you want to say on that?

13 MR. SPITLER: No, Judge.

14 THE COURT: Okay. Let's talk about the statement
15 outside the scope of the conspiracy. Or at least outside the
16 temporal scope of the conspiracy. Tell me how that comes in.

17 MR. PARISI: Your Honor, that comes in as evidence
18 that's inextricably intertwined, and the government also
19 proffered potential 404(b) evidence within this indictment.
20 But that act -- Hakeem Humphrey had testified in the grand
21 jury at that point. The Michael Walker, who's identified,
22 he's in the Damn Fool video counting money in a vehicle, was
23 already identified as a CBL member, confronts Hakeem Humphrey
24 for cooperating with law enforcement in this investigation in
25 June 19th of 2019.

1 Then Mr. -- on the street, also, is Kareem Pryor, and
2 Mr. Walker signal to each other when it is time to assault
3 Mr. Humphrey. And then they start assaulting Mr. Humphrey on
4 the street, on Genesee Street in Cheektowaga. And when they
5 assault him, it is in retaliation for his cooperation in this
6 case.

7 THE COURT: What's the hearsay statement?

8 MR. PARISI: Well, the hearsay statement is what was
9 said which to -- which is also res gestae part of the crime is
10 what is said to Mr. Humphrey is that Michael Walker accuses
11 him of killing Alvin McDowell, and also for snitching on
12 Larell and them.

13 So those would be the hearsay statements, Your Honor.
14 Which, our argument is res gestae part of the crime, and that
15 they should come in, as well. But we're just identifying this
16 issue so that we're not litigating it when Mr. Humphrey is on
17 the stand.

18 THE COURT: Mr. Spitler? I'm not so sure this is
19 hearsay.

20 MR. SPITLER: Well, but the purpose of it, I mean, as
21 I understand it, one of the reasons that he is assaulted is
22 because he's accused by these two individuals of causing the
23 death of Mr. McDowell. And the death of Mr. McDowell, I don't
24 think, was an overt act alleged by the government having
25 anything to do with -- and I may be wrong, but as I'm trying

1 to recall the overt acts originally in the original
2 indictment, I don't remember that being anything to do with
3 Mr. McDowell being involved.

4 So now what we're doing is we're -- they're
5 piggybacking. They're saying we're assaulting you for two
6 reasons: 1, because you cooperated, and 2, because you killed
7 Mr. McDowell.

8 And -- and without Mr. Pryor or Mr. Walker taking the
9 stand, how can we determine that that was the mindset of
10 Walker and Pryor when they assaulted him?

11 THE COURT: Okay. Let me -- let me think about this
12 and come back in about ten minutes and I'll rule on this.

13 MR. PARISI: Yes, Your Honor.

14 THE COURT: Okay. Anything else we need to do now?

15 MR. PARISI: No, Your Honor.

16 MR. SPITLER: No, thanks, Judge.

17 THE COURT: Thanks.

18 THE CLERK: All rise.

19 (Off the record at 10:58 a.m.)

20 (Back on the record at 11:07 a.m.)

21 (Jury not present.)

22 THE CLERK: All rise.

23 THE COURT: Please be seated.

24 THE CLERK: We are back for the continuation of the
25 jury trial in 17-cr-103, United States of America versus

1 Dalvon Curry. All counsel and parties are present.

2 THE COURT: Okay. So I don't think I have enough to
3 find by a preponderance of the evidence that there was a
4 conspiracy. I think you can do it through this witness, but I
5 think you need to establish a foundation through this witness.

6 What evidence do I have, other than the police
7 officers testifying about their investigation that there was a
8 conspiracy?

9 MR. PARISI: Well, that was, from the government's
10 proffer, Your Honor, what is going to come out during the
11 course of this trial, as well, which is what Bourjaily says
12 the Court can consider. And the Court should, under
13 Bourjaily, the Court generally allows the evidence, and if it
14 does not get linked up later on, either instructs the jury or
15 declares a mistrial.

16 THE COURT: Yeah. You agree with that, Mr. Spitler?

17 MR. SPITLER: Yes, Judge.

18 THE COURT: Yeah. So I'm just saying right now, I'm
19 not prepared to make a finding by a preponderance of the
20 evidence that there was a conspiracy. Based on the proffer
21 that you're giving me, yeah, sure, but -- but -- but I don't
22 think there's enough evidence in.

23 MR. PARISI: Your Honor, I guess I don't know --

24 THE COURT: So I guess I would let it in, subject to
25 the establishment of a conspiracy, and I guess you're right.

1 I guess I could always declare a mistrial if you don't
2 establish it at some point.

3 Okay. And as far as whether the statements are in
4 furtherance of a conspiracy, I'm talking about the first two
5 right now, it sounds to me like they are, but obviously
6 Mr. Spitler will be able to object on a question-by-question
7 basis, and the question could be outside the scope. You know,
8 you don't want to use the word conspiracy, I'm sure --

9 MR. SPITLER: Right.

10 THE COURT: -- when you're objecting. But outside
11 the scope, if you think a question is asked is outside the
12 scope of the conspiracy. And if we have to take argument,
13 we'll take argument up here. But I'm inclined to let in what
14 we're talking about now because I think conceptually, what
15 he's saying is within the scope of the conspiracy.

16 I have other problems with the statements that
17 temporally are outside the scope of the conspiracy. I want to
18 take a look at some caselaw. So if you can wait to get to
19 those, maybe we'll take a lunch break or something like that
20 around then.

21 How long do you expect this witness to be on?

22 MR. PARISI: I think through lunch break, Your Honor.

23 THE COURT: Okay. So maybe leave those questions
24 until the end, and we'll get to those. Okay?

25 We have a chair that needs to be fixed, I understand.

1 (Off the record for equipment repair.)

2 (Back on the record.)

3 THE COURT: That's okay. Thank you.

4 MR. PARISI: Your Honor, with respect to -- prior to
5 this witness, too, we have signed some stipulations and
6 they're marked as Joint Exhibits 1, 2 and 3. What is the
7 Court's pleasure?

8 Within these, there's also subparagraphs that relate
9 to -- well, will not relate to this witness, so we've tried to
10 do, is have it so when a witness testifies who it does relate
11 to, just read in that one paragraph that would relate. I
12 don't know if the Court wants to do it, or wants the parties
13 to read it in.

14 THE COURT: I leave that up to you. So you're going
15 to be offering the stipulations?

16 MR. PARISI: I will, yes, I'll be offering the
17 stipulations.

18 THE COURT: Okay. And if you want to read them,
19 that's fine. If you want me to read them, that's okay, too.

20 MR. PARISI: With the Court's permission, I'll read
21 the paragraph that relates to this.

22 THE COURT: Okay. Any problem with that?

23 MR. SPITLER: No, Your Honor.

24 THE COURT: Okay. And as long as it's read
25 accurately, we won't have a problem.

1 MR. PARISI: I'll try.

2 THE COURT: I'm sure you will.

3 Okay. Are we ready to bring them back?

4 MR. PARISI: Yes, Your Honor.

5 MR. SPITLER: Yes, Your Honor.

6 THE COURT: Okay. Let's bring them back, please.

7 MR. PARISI: I was told Mr. Humphrey would go on the
8 stand first, and then the jurors.

9 THE COURT: That's fine. Let's bring him in.

10 (Hakeem Humphrey seated at 11:16 a.m.)

11 (Jury seated at 11:17 a.m.)

12 THE COURT: Okay. The record will reflect that all
13 our jurors, again, are present.

14 That break took a little longer than expected. Part
15 of it was my fault, and part of it was that we had to get a
16 chair fixed, which we have fixed now.

17 I want you folks to know we are trying to be as
18 respectful of your time as possible. We're trying to move
19 things as quickly as we can, but sometimes things come up and
20 we have to deal with them. I just want you folks to know that
21 we're not dillydallying, we're moving along as fast as we can.

22 Okay. You can call your next witness.

23 MR. PARISI: Your Honor, the government calls Hakeem
24 Humphrey.

25

1 **H A K E E M H U M P H R E Y**, having been duly called and
2 sworn, testified as follows:

3 MR. PARISI: Your Honor, prior to beginning, the
4 government has a stipulation that I would like to read into
5 the record.

6 THE COURT: Go ahead.

7 MR. PARISI: From Joint Exhibit 1, and I'll display
8 it on the ELMO, read along.

9 Joint Trial Stipulation Regarding Witnesses.

10 The United States of America, by and through its
11 attorneys, James P. Kennedy, Jr., United States Attorney for
12 the Western District of New York, Paul C. Parisi, Seth T.
13 Molisani, and Christopher O. Taylor, Assistant United States
14 Attorneys of counsel, and the defendant Dalvon Curry,
15 personally and through his attorney Kevin Spitler, Esquire,
16 hereby stipulate to the admissibility into evidence at trial
17 in this case of the following facts and government exhibits.

18 Relevant here, the government will read paragraph 3
19 of this document.

20 That Buffalo Police photographer Scott Seifert would
21 testify that he viewed, downloaded and preserved store
22 surveillance video from B&G Food Market at East Ferry and
23 Goodyear Streets, Government Exhibit 31.1, on September 21st,
24 2015, as well as video from the store at the corner of Grant
25 and Garner Streets, Buffalo, New York, from December 5, 2015,

1 Government Exhibit 35.2. The date and times displayed on the
2 videos are accurate.

3 Mr. Seifert would also testify that he created still
4 photographs in Government Exhibits 31.35 through 31.55 from
5 Government Exhibit 31.1. These exhibits are exact downloads
6 of the recordings secured on Mr. Seifert's preserved records.

7 And the government would offer Government
8 Exhibits 31.1, 35.2, and 31.35 through 31.55 into evidence
9 consistent with the stipulation.

10 MR. SPITLER: No objection.

11 THE COURT: Okay. So those exhibits are received as
12 evidence.

13 **The following were received in Evidence:**

14 **GOVERNMENT EXHIBIT 31.1**

15 **GOVERNMENT EXHIBIT 35.2**

16 **GOVERNMENT EXHIBIT 31.35 - 31.55**

17 THE COURT: And, folks, I told you at the beginning
18 that one of the forms of evidence was stipulations, those are
19 things the parties agreed to are evidence, and this is one
20 such stipulation, it's the first one, and I understand there
21 will be more, but this is the first one.

22 So the parties have agreed to it, and you may accept
23 that as evidence. Those exhibits are admitted, and you may
24 proceed.

25 MR. PARISI: Thank you, Your Honor.

1 **EXAMINATION BY MR. PARISI (DIRECT) :**

2 Q. Good morning, Mr. Humphrey.

3 A. Good morning.

4 Q. I'm going to ask you to pull that microphone closer to
5 you. How old are you?

6 A. 19.

7 Q. What's your date of birth?

8 A. March 7, 2000.

9 Q. What city did you grow up in?

10 A. Buffalo, New York.

11 Q. Is there a certain part of the city that you grew up in?

12 A. Scheule.

13 Q. Where is Scheule?

14 A. Between Ferry and Delavan.

15 Q. Is the Scheule area in the city in the Towne Gardens?

16 A. No.

17 Q. Did you ever move to the Towne Gardens?

18 A. Yes.

19 Q. How old were you when you moved to the Towne Gardens?

20 A. About 14.

21 Q. What year was that?

22 A. 2014.

23 Q. Do you remember what part of 2014?

24 A. Summer, I believe.

25 Q. Prior to moving from the Scheule area, had you ever heard

1 of a group that calls themselves BFL?

2 A. Yes.

3 Q. How had you heard of that? I'm sorry, how had you heard
4 of that prior to moving to the Towne Gardens?

5 A. Facebook, music videos.

6 Q. Had you seen Facebook posts regarding BFL?

7 A. Yes.

8 Q. Had you seen music videos from BFL?

9 A. Yes.

10 Q. Did -- other than that, did you know anything about BFL
11 prior to moving to Towne Gardens?

12 A. No.

13 Q. When you moved to the Towne Gardens, did you know anyone
14 around your age that lived in the Towne Gardens?

15 A. No.

16 Q. You hadn't met anybody before moving there?

17 A. No.

18 Q. When you moved to the Towne Gardens, did you try to get
19 to know some individuals that were about your age?

20 A. Yes, I did.

21 Q. How did you try to get to know those people?

22 A. I was gambling and stuff like that.

23 Q. Well, what do you mean about gambling?

24 A. Shooting dice.

25 Q. And so does that mean you just walk up to people shooting

1 dice and go in the game? How does that work?

2 A. Yeah, you ask what's bank, and you go in the game.

3 Q. "What's bank," what does that mean?

4 A. How much money is the bank.

5 Q. And is that how you first started to get to know people
6 who were around your age?

7 A. Yes.

8 Q. Who were the first people around your age that you met
9 from BFL?

10 A. Larell, Dal, Rees, Trey, Kwon, a lot of names.

11 Q. Did you start -- when you moved to the Towne Gardens, did
12 you start hanging out with these individuals every day?

13 A. Yes.

14 Q. Did you start to become friends with them?

15 A. Yes.

16 Q. Prior to moving to the Towne Gardens, did you know
17 anything about CBL?

18 A. No.

19 Q. When you moved to the Towne Gardens, did you learn there
20 were people who called themselves CBL in the Towne Gardens?

21 A. Yes.

22 Q. Starting in 2014 or 2015, did you start to sell marijuana
23 in the Towne Gardens?

24 A. Yes.

25 Q. How long was it from the time that you moved in until the

1 time you started selling marijuana?

2 A. Couple months.

3 Q. Where did you sell marijuana?

4 A. In the plaza, in the Towne Gardens Plaza.

5 Q. Why did you sell marijuana in the Towne Gardens Plaza?

6 A. To have money.

7 Q. Why that location though?

8 A. Because it's a frequent area for marijuana buyers and
9 other drugs.

10 Q. Would customers know to go to that area?

11 A. Yes.

12 MR. PARISI: Can we pull up Government Exhibit
13 46.110A, please?

14 THE COURT: In evidence?

15 MR. PARISI: It's in evidence, yes, Your Honor.

16 BY MR. PARISI:

17 Q. If you look on the screen, do you see Government Exhibit
18 46.110A?

19 A. Yes.

20 Q. And do you see the plaza that you would sell marijuana
21 from?

22 A. Yes.

23 Q. Can you just touch the screen? It's a touchscreen. You
24 can tell us where it is.

25 You put a circle at the Hamyar Food area. Is that the

1 plaza where you would sell marijuana?

2 A. Yes.

3 Q. When you first moved into the Towne Gardens, could you
4 start selling marijuana before meeting anybody?

5 A. No.

6 Q. Why not?

7 A. Because they'll rob you, beat you up, and extort you.

8 Q. Who would?

9 A. BFL/CBL.

10 Q. Why?

11 A. Because I was not from around there.

12 Q. Did you, a few months later, start to want to make money
13 by selling marijuana?

14 A. Yes.

15 Q. Why did you want to make money by selling marijuana?

16 A. Because everybody else was flashy, and I wanted to be
17 flashy, too.

18 Q. And over the course of a few months before you started
19 selling marijuana, did you start to get to know the people
20 that you told us about, Larell, Dal, Kwon, those individuals?

21 A. Yes.

22 Q. How long was it from the time you moved there in the
23 first few months that you learned who the members of BFL
24 were?

25 A. Almost instantly.

1 Q. How did you know that?

2 A. 'Cuz they go around talking about it. Some have tattoos
3 of it.

4 Q. Did you learn the ages of the individuals that called
5 themselves BFL?

6 A. Yes.

7 Q. How were those -- what were the ages of those individuals
8 compared to you?

9 A. What you mean?

10 Q. Are they older? Are they younger?

11 A. Than me?

12 Q. Yes.

13 A. Older.

14 Q. How much older?

15 A. Well, four, five years.

16 Q. What about when you moved in, did you learn of
17 individuals that called themselves CBL?

18 A. Yes.

19 Q. How -- how soon when you moved in did you learn about
20 CBL?

21 A. About a month or two.

22 Q. How did you start to learn about CBL?

23 A. Just hanging around 'em. Being around 'em.

24 Q. How often were you hanging around the people that you
25 knew to be members of BFL when you first moved in after you

1 started gambling, playing dice?

2 A. Almost every day.

3 Q. How long did you live in the Towne Gardens for?

4 A. About three years.

5 Q. Did you move out at some point in 2017?

6 A. Yes.

7 Q. During that time, from the summer of 2014 until you moved
8 out in 2017, were you spending just about every day hanging
9 out with the members of BFL or CBL in the Towne Gardens?

10 A. Yes.

11 Q. Did you consider yourself a member of BFL ever?

12 A. No.

13 Q. What about CBL?

14 A. No.

15 Q. What area of the city did you learn that BFL and CBL were
16 from?

17 A. Downtown, Towne Gardens.

18 Q. Is Towne Gardens a housing complex that you lived in?

19 A. Yes.

20 Q. When you say "downtown," what part of the city are you
21 talking about?

22 A. Downtown.

23 Q. Meaning what streets?

24 A. William, Clinton, Jefferson.

25 Q. And people who were from downtown or from that area,

1 would they say that they were from downtown?

2 A. Yes.

3 Q. Now, if the members of BFL are around four years older
4 than you, are the members of CBL older or younger than you?

5 A. Older.

6 Q. Are they older or younger than the members of BFL?

7 A. Older.

8 Q. Do you know whether the members of BFL and CBL were part
9 of the same gang?

10 A. No.

11 Q. You don't know?

12 A. No, I wouldn't say the same gang.

13 Q. Would you say that they were -- would you say that BFL
14 was one gang?

15 A. Yes.

16 Q. Would you say that CBL was another gang?

17 A. Yes.

18 Q. Would you say that they worked together?

19 A. Yes.

20 Q. Would you say that members of BFL, that if somebody from
21 CBL had a problem with a rival gang, would members of BFL
22 have the same problem with the members of that gang?

23 A. Yes.

24 Q. If somebody from BFL had problems with a member of a
25 rival gang, would somebody from CBL have problems -- have the

1 same problems?

2 A. Yes.

3 Q. And what is the word that you would use to describe a
4 problem with a rival gang?

5 A. Beef.

6 Q. Did you start to know, in the times that you were in the
7 Towne Gardens, about drug dealing that was occurring in the
8 Towne Gardens?

9 A. Yes.

10 Q. Did you start to know members of BFL and CBL that --

11 MR. SPITLER: I'm sorry, Judge. I'm going to object
12 to the leading. I let it go for a while, but it just seems
13 it's going on too much.

14 THE COURT: Yeah, sustained. Let's knock off the
15 leading, please, and ask questions that are not leading,
16 please.

17 MR. PARISI: Yes, Your Honor.

18 BY MR. PARISI:

19 Q. Did you know about drug dealing that occurred in the
20 Towne Gardens?

21 A. Yes.

22 Q. Did you know of any individuals from BFL or CBL that sold
23 drugs in the Towne Gardens?

24 A. Yes.

25 Q. Let's start with members of BFL.

1 MR. PARISI: And if we could, show 94.1A, please.

2 BY MR. PARISI:

3 Q. Mr. Humphrey, it will be on the screen in front of you.

4 Do you recognize any of the individuals in 94.1A?

5 A. Yes.

6 Q. And starting at the left, can you tell us who that is?

7 A. Lil B.

8 Q. Lil B. Do you know Lil B's real name?

9 A. Bryan.

10 Q. Do you know his last name?

11 A. Braswell.

12 Q. Now, is it fair to say that some individuals you knew,

13 you would know their full name?

14 A. Yeah, some.

15 Q. Would there be individuals that you'd only refer to by

16 nickname?

17 A. Yes.

18 Q. Did you have a nickname?

19 A. Yes.

20 Q. What was your nickname?

21 A. Bubba.

22 Q. Bubba? All right. So Lil B is which one, wearing on the
23 head?

24 A. Yes, the white shirt.

25 Q. And then with the red shirt next to Lil B?

1 A. GB.

2 Q. Do you know GB's real name?

3 A. Shameris.

4 Q. Do you know his last name?

5 A. Washington.

6 Q. The one in the middle with the white stripes?

7 A. Dalvon.

8 Q. Do you know Dalvon's last name?

9 A. Curry.

10 Q. The next one, do you know who that is?

11 A. Kwon.

12 Q. Do you know Kwon's real name?

13 A. No.

14 Q. And then the one on the far right of the photograph?

15 A. Miquise.

16 Q. Do you know Miquise's last name?

17 A. Jones.

18 Q. Does Miquise have a nickname?

19 A. Yes.

20 Q. What was it?

21 A. Scaife.

22 Q. Do you know if these people were part of any gang?

23 A. Yes.

24 Q. What gang?

25 A. BFL.

1 Q. All five of them?

2 A. All five of 'em.

3 MR. PARISI: If we can go to 94.1B, please.

4 BY MR. PARISI:

5 Q. Now with this, if we start with the person on the right
6 of the photograph, do you see that person?

7 A. On the right?

8 Q. Yes.

9 A. Yeah.

10 Q. Do you know who that is?

11 A. Dario.

12 Q. Do you know Dario's last name?

13 A. No.

14 Q. And the person next to Dario with the hat on?

15 A. Larell.

16 Q. Do you know Larell's last name?

17 A. Watkins.

18 Q. Do you know if Dario and Larell Watkins were members of
19 any gang?

20 A. Yes.

21 Q. What gang?

22 A. BFL.

23 MR. PARISI: 94.1F, please.

24 BY MR. PARISI:

25 Q. The individual on the far left with the hood up, do you

1 recognize who that individual is?

2 A. That's Rees.

3 Q. Do you know Rees's real name?

4 A. Maurice Rice.

5 Q. Is Maurice Rice in a gang?

6 A. Yes.

7 Q. What gang?

8 A. BFL.

9 MR. PARISI: 94.1I, please.

10 BY MR. PARISI:

11 Q. The individual in the back of the photograph with the
12 hair in front of their face that I'm circling right now, do
13 you recognize who that individual is?

14 A. Yes.

15 Q. What who is that?

16 A. Lil D.

17 Q. Lil D?

18 A. Yeah, Lil D.

19 Q. Do you know Lil D's real name?

20 A. No.

21 Q. Do you know, is Lil D a member of a gang?

22 A. Yes.

23 Q. What gang?

24 A. BFL.

25 MR. PARISI: Then 94.3B, please.

1 BY MR. PARISI:

2 Q. With this, the person on the right of the photograph with
3 the hat on that I'm circling, do you recognize who that is?

4 A. Yeah.

5 Q. Who is that?

6 A. That's Laron.

7 Q. Laron what?

8 A. Watkins.

9 Q. Do you know if Laron Watkins is a member of a gang?

10 A. Yeah.

11 Q. What gang?

12 A. 31/BFL.

13 Q. 31/BFL? You have to answer out loud.

14 A. Yes.

15 Q. Is 31 -- what is 31?

16 A. Another downtown gang.

17 Q. So is it fair to say that there were separate gangs in
18 the downtown area?

19 A. Yeah.

20 Q. And you told us about CBL and BFL already with respect to
21 the beefs, correct?

22 A. Yes.

23 Q. Would 31 be another gang that was an ally of BFL or CBL?
24 Or were they different?

25 A. Yeah, I say that.

1 Q. What would you say?

2 A. They're a ally.

3 Q. From being around the members of BFL and CBL, did
4 individuals ever talk about -- we'll start with shootings.

5 Did you ever talk to individuals about shootings that
6 occurred?

7 A. Yes.

8 Q. And did you talk to individuals of BFL about shootings
9 that occurred?

10 A. Yes.

11 Q. What about individuals with CBL?

12 A. No, not really.

13 Q. So with respect to the individuals of BFL, what was the
14 reason that you would talk to them about shootings that
15 occurred?

16 A. They was my age, I guess.

17 Q. Who was, the BFL?

18 A. Yeah, closer to my age.

19 Q. Why was it important for you to know that shootings
20 occurred?

21 A. So I could know who has a problem with who, and if they
22 come down there, call them and let them know.

23 Q. Call who and let them know?

24 A. BFL members.

25 Q. Why would you call them and let them know.

1 A. To let them know their rival is down here.

2 Q. And why would it be important to know that a rival was
3 down in the area of Towne Garden?

4 A. So nobody won't die.

5 Q. In addition to shootings, did you make any observations
6 about various individuals who sold drugs?

7 A. Yes.

8 Q. From BFL or CBL?

9 A. Yes.

10 Q. I want to talk about some of these individuals.

11 Larell Watkins. Did you know about Larell Watkins,
12 whether he sold any drugs?

13 A. Yes.

14 Q. How did you make those observations?

15 A. I seen him.

16 Q. What did you see?

17 A. Seen Larell selling weed, heroin and crack.

18 Q. Where?

19 A. In the Towne Gardens Plaza.

20 Q. Around where you were selling it?

21 A. Yes.

22 Q. How often was Larell Watkins selling those drugs in the
23 Towne Gardens Plaza?

24 A. Every day.

25 Q. What about a person named Rees, Maurice Rice?

1 A. Yes.

2 Q. Do you know if Maurice Rice sold drugs?

3 A. Yes, he do.

4 Q. How do you know that?

5 A. I seen him.

6 Q. What would you see?

7 A. I seen him selling crack and heroin.

8 Q. How often would Maurice Rice sell crack and heroin?

9 A. Every day.

10 Q. Now, are people selling crack, these drugs, in the plaza
11 where you were selling it? Or are they selling it in the
12 Towne Gardens, in the apartments? Where?

13 A. In the apartments.

14 Q. Is it fair to say that -- well, what drug was mainly
15 being sold in the plaza?

16 A. Weed.

17 Q. And then within the apartments, what drugs were being
18 sold?

19 A. Crack and heroin.

20 Q. When you say you see people sell drugs, describe that.
21 What does that mean?

22 A. People giving them the money, and they handing them
23 drugs.

24 Q. What about Shameris Washington?

25 A. Yes.

1 Q. GB?

2 A. Briefly.

3 Q. What does that mean, briefly?

4 A. Only when someone went to jail.

5 Q. So what -- describe that for us.

6 A. He only sell drugs when someone went to jail and left him
7 something.

8 Q. Someone from BFL?

9 A. Yes.

10 Q. Did you ever see Shameris Washington sell drugs that
11 someone left for him when they went to jail?

12 A. Yes.

13 Q. What kind of drugs did he sell?

14 A. Heroin.

15 Q. What about Miquise Jones, Scaife? Did you ever know him
16 to sell any drugs?

17 A. Yes.

18 Q. What kinds of drugs did Miquise Jones sell?

19 A. Weed, heroin, crack.

20 Q. Where did he sell that?

21 A. He sold weed in the plaza, and crack and heroin in the
22 back of the plaza, in the apartments.

23 Q. Had you seen him selling to customers?

24 A. Yes.

25 Q. Now, a person named Markel Green. Do you know a person

1 named Markel Green?

2 A. Yes.

3 Q. Do you know a nickname for that person?

4 A. Dolo.

5 Q. How do you know that person, Dolo?

6 A. From being from BFL.

7 Q. Is he a member of BFL?

8 A. Yes.

9 Q. And with respect to Dolo, do you know if he sold drugs?

10 A. Yes.

11 Q. What?

12 A. Weed.

13 Q. Where would he sell weed?

14 A. In the plaza.

15 Q. What about Lil B, Bryan Braswell. Did you know Lil B or

16 Bryan Braswell to sell drugs?

17 A. Never seen him selling drugs.

18 Q. What about Kwon, the Raekwon that you described. Did you

19 ever see him selling drugs?

20 A. No.

21 Q. Do you know a person named Chris Henry?

22 A. Yes.

23 Q. How do you know Chris Henry?

24 A. He's from CBL.

25 Q. And did you ever know Chris to sell any drugs?

1 A. Yes.

2 Q. What?

3 A. Crack.

4 Q. How often would Chris be selling crack cocaine?

5 A. Every day.

6 Q. The person you identified as Lil D, did you know Lil D to
7 sell drugs?

8 A. No.

9 Q. The person that you identified as Dalvon Curry, do you
10 see Dalvon Curry in the courtroom?

11 A. Yes.

12 Q. Can you please point to Dalvon Curry and describe an
13 article of clothing?

14 A. Striped shirt.

15 Q. Let the record --

16 A. Glasses.

17 MR. PARISI: Let the record reflect the witness
18 identified the defendant.

19 THE COURT: Yes, it does.

20 BY MR. PARISI:

21 Q. Did you ever know Dalvon Curry to sell any drugs?

22 A. No.

23 Q. No, did you ever see him selling any drugs?

24 A. No.

25 Q. Now I'd like to talk to you about some members of CBL.

1 You said you heard of CBL. Can you tell us some of the
2 members of CBL.

3 A. Gucc, Dean, L-O, 90.

4 Q. All right. We'll go in to some of them. We'll start
5 with 90. Do you know 90's real name?

6 A. Lar'Quon Watkins.

7 Q. Do you know, is he related to any of the other Watkins
8 that you talked to us about?

9 A. Yes, he is.

10 Q. How so?

11 A. Their brother.

12 Q. Do you know 90, Lar'Quon Watkins, to ever sell any drugs?

13 A. Yes.

14 Q. What drugs did you know him to sell?

15 A. Crack and heroin.

16 Q. How did you know that?

17 A. I seen it.

18 Q. Now, is 90 -- let me -- I'm sorry. The people you told
19 us about already from BFL, were those people who were selling
20 to users of the drugs?

21 A. Yes.

22 Q. Did 90 also sell to users of the drugs?

23 A. Yes.

24 Q. Did he also supply individuals?

25 A. Yes.

1 Q. Tell us about that. Who did he supply?

2 A. Larell. Larell, Rees. That's all I can think of right
3 now.

4 Q. When you say "supply," what does that mean to you?

5 A. Get them large amount of drugs.

6 Q. And you said crack and heroin. Have you ever seen 90
7 supply a larger amount of drugs to either Rees or Larell?

8 A. Yes.

9 Q. How often would 90 be doing that?

10 A. About once a week.

11 Q. The person you know as L-O, do you know what Lowe's real
12 name?

13 A. Mikel.

14 MR. PARISI: I'm sorry, can we have 103.2 that's in
15 evidence, please.

16 (103.2 played.)

17 MR. PARISI: Pause, please.

18 BY MR. PARISI:

19 Q. We saw the person that was holding the camera. Did you
20 see that person, Mr. Humphrey?

21 A. Yes.

22 Q. Who was that person with the white hooded sweatshirt
23 that's holding the camera?

24 A. That's Mikel.

25 Q. And did you recognize any of the other people in that

1 video?

2 A. It was moving too fast, I really couldn't see.

3 Q. Okay. And did you know Mikel Lowe to sell any drugs?

4 A. Yes.

5 Q. What did Mikel Lowe sell?

6 A. Crack, heroin, weed.

7 Q. How often would you see Mikel Lowe selling to customers?

8 A. Every day.

9 Q. Do you know a person named Steve?

10 A. Yes.

11 Q. Do you know Steve's real name?

12 A. Steve Major.

13 Q. Is Steve Major part of a gang?

14 A. Yes.

15 Q. What gang?

16 A. BFL.

17 Q. How long have you known Steve Major?

18 A. About three, four years.

19 Q. And would Steve Major sell any drugs?

20 A. Yes.

21 Q. What?

22 A. Crack and heroin.

23 Q. How often would Steve Major be selling drugs?

24 A. Every day.

25 Q. What about the person you said named Dario that we saw on

1 one of the videos that you identified?

2 A. Um-hum.

3 Q. Did you know Dario to sell any drugs?

4 A. No.

5 Q. Did you know Dario to commit any crimes?

6 A. No.

7 Q. Have you ever seen Dario with a gun?

8 A. Yes.

9 Q. How often would you see Dario with a gun?

10 A. I only seen him once in a while, but every time I seen
11 him he had a gun.

12 Q. And when you saw him with a gun, would that be inside the
13 Towne Gardens or outside the Towne Gardens?

14 A. In the Towne Gardens.

15 Q. So as somebody who sells marijuana in the Towne Gardens
16 Plaza, is it important for you to know when the police are
17 coming to the Towne Gardens Plaza?

18 A. Yes.

19 Q. Why?

20 A. So I won't get arrested.

21 Q. And is there something that you would do with the drugs
22 that you have on you if you see the police around?

23 A. Yeah.

24 Q. What would you do?

25 A. Put 'em in my drawers.

1 Q. Put them where?

2 A. In my drawers.

3 Q. Does that mean your underwear?

4 A. Yeah, it's my underwear.

5 Q. And why would you do that?

6 A. Because they not supposed to go in your underwear.

7 Q. And did you, from dealing drugs, have an idea of what you
8 believed the police could and could not do?

9 A. Yes.

10 Q. Did you also talk to individuals from BFL or CBL about
11 the types of drugs that they sold?

12 A. Yes.

13 Q. Has it ever happened that an individual who wanted drugs
14 that you didn't sell, that you directed them to another
15 person?

16 A. Yes.

17 Q. Who would you direct them to?

18 A. Whoever was around.

19 Q. Would that be someone from the Towne Gardens, BFL and
20 CBL? Or someone outside of that?

21 A. Someone from Towne Gardens.

22 Q. Would that be specifically somebody from BFL or CBL?

23 A. Yes.

24 Q. Why would you want to direct them to somebody from BFL or
25 CBL?

1 A. To keep the money in one area.

2 Q. How often were you spending with members of either BFL or
3 CBL?

4 A. Every day.

5 Q. Would the members of BFL or CBL be spending time
6 together?

7 A. Yes.

8 Q. Are there some individuals from BFL or CBL who lived in
9 the Towne Gardens?

10 A. Yes.

11 Q. Are there some individuals from BFL or CBL who lived
12 outside of the Towne Gardens?

13 A. Yeah.

14 Q. Would those people who lived outside of the Towne Gardens
15 come and spend time frequently in the Towne Gardens?

16 A. Yes.

17 Q. If you see the police coming through the Towne Gardens,
18 what do you do?

19 A. Depends on what I have on me.

20 Q. So do you notify anybody else if the police are there?

21 A. Yeah.

22 Q. How do you do that?

23 A. We would give a call.

24 Q. Why would you do that?

25 A. So everybody know the police are around.

1 Q. Why? Why do they want to know that?

2 A. So if they got guns or drugs on them, they can get rid of
3 it.

4 Q. Do people always keep guns or drugs, all of their guns
5 and drugs on them?

6 A. Most of the time.

7 Q. Do they have places that they put them when either the
8 police are there or when they're not on them?

9 A. Yes.

10 Q. Where would they put them?

11 A. In the buildings.

12 Q. And in where in the building? Hallway apartment?

13 A. In the radiators in the hallway.

14 Q. And are there also vacant apartments that people would
15 use?

16 A. Yes.

17 Q. Why would they put them in radiators or vacant
18 apartments?

19 A. Because if they get found there, they really can't charge
20 nobody with that.

21 Q. Now are there some members of CBL who supplied more drugs
22 to members of CBL or BFL?

23 A. Yes.

24 Q. Do you know who some of those people are beside -- you
25 already told us about 90. Are there other ones?

1 A. Yes.

2 Q. Who are they?

3 A. Yam. Pif.

4 Q. Do you know Yam's real name?

5 A. Michael Walker.

6 Q. Is Michael Walker a member of a gang?

7 A. Yes.

8 Q. What was that?

9 A. CBL.

10 Q. How long had you known Michael Walker for?

11 A. About four years, too.

12 Q. Did you meet Michael Walker from spending time in the

13 Towne Gardens?

14 A. Yes.

15 Q. Had you ever seen him selling drugs to anybody?

16 A. Yes.

17 Q. Tell us about that.

18 A. I seen him handing heroin and crack over to other

19 distributors and users.

20 Q. So he sold to people who then resold it, and users?

21 A. Yes.

22 Q. Who are the people that were given the -- the other

23 distributors, who were the ones that were given the drugs

24 from Michael Walker?

25 A. Same people. Rees, Larell, Miquise.

1 Q. How often would you see people being, those individuals
2 you just described, being supplied by Michael Walker?

3 A. About once a week.

4 Q. You said the name Pif?

5 A. Yes.

6 Q. Who's Pif?

7 A. Shawn Woods.

8 Q. How do you know Shawn Woods?

9 A. From Towne Gardens.

10 Q. Is Shawn Woods or Pif a member of CBL or BFL?

11 A. Yeah, CBL.

12 Q. And do you know him to deal drugs at all?

13 A. Yes.

14 Q. What do you know about that?

15 A. He sell heroin.

16 Q. How long have you known Shawn Woods?

17 A. About four years.

18 Q. Is Shawn Woods a person who would come down to the Towne
19 Gardens and spend every day in the Towne Gardens?

20 A. No.

21 Q. How often would you see Shawn Woods?

22 A. Once or twice a week.

23 Q. And had you ever seen him supply drugs to any of the
24 distributors?

25 A. Yes.

1 Q. You said heroin?

2 A. Yes.

3 Q. What persons did he supply heroin to?

4 A. Dean, Yam, and K-9.

5 Q. K-9?

6 A. Yep.

7 Q. Who is K-9? Do you know a real name for K-9?

8 A. No.

9 Q. I'd like to go back a little bit to your time in Scheule.

10 Were you familiar with other gangs from the City of
11 Buffalo when you lived on Scheule?

12 A. Yes.

13 Q. What other gangs from uptown, we'll say, were you
14 familiar with?

15 A. OTC, 2-4, Bailey.

16 Q. And you said -- I'm sorry, just to make sure the record's
17 clear, you said OTC?

18 A. Yes.

19 Q. 2-4?

20 A. Yes.

21 Q. Bailey?

22 A. Yes.

23 Q. Are 2-4 and Bailey the same thing or two different ones?

24 A. Two different ones.

25 Q. Have you ever heard of PBC?

1 A. Yes.

2 Q. What area of the city is PBC?

3 A. Delavan, Erb Street.

4 Q. Is that considered uptown?

5 A. Yes.

6 Q. Were you a member of a gang when you were on Scheule?

7 A. Yes.

8 Q. What gang?

9 A. Scheule.

10 Q. And then when you moved to BFL, did you still -- I'm
11 sorry. When you moved to Towne Gardens, did you still
12 consider yourself a member of Scheule?

13 A. Yeah.

14 Q. You -- why was it that members of BFL and CBL were
15 friendly with you then?

16 A. 'Cuz I lived down there.

17 Q. You got to know them?

18 A. Yeah.

19 Q. Did Scheule have a beef with CBL and BFL, with downtown?

20 A. No.

21 Q. When you moved downtown and started spending time with
22 the BFL and CBL members for a few years, did you learn that
23 they had any beefs with any rivals?

24 A. Yes.

25 Q. What beefs did you learn about?

1 A. OTC.

2 Q. Any others?

3 A. Bailey, that's it.

4 Q. In your life, had you ever met a person named Jaquan
5 Sullivan?

6 A. Yeah.

7 Q. How did you know Jaquan Sullivan?

8 A. We used to play basketball together.

9 Q. Did you -- was he older or younger than you?

10 A. Older.

11 Q. How much older?

12 A. Three or four years.

13 Q. When you played basketball, was that playing pick-up
14 games? Or were you part of a team?

15 A. Pick-up games.

16 Q. Would you consider yourself friends with Jaquan Sullivan?

17 A. Yeah.

18 Q. Did there ever come a point in time when your -- you
19 considered your friendship with Jaquan Sullivan over?

20 A. Yes.

21 Q. Tell us about that.

22 A. It was like 2015, I was gambling at the JFK. He came
23 shooting.

24 Q. So I want to talk about that. 2015, when was that?

25 A. Summer of 2015.

1 Q. I'm sorry, the summer of 2015? You said you were
2 gambling at the JFK?

3 A. Yes.

4 Q. And at that time, were you spending just about every day
5 with members of BFL and CBL?

6 A. Yes.

7 Q. Is it fair to say that someone on the outside of downtown
8 would have affiliated you with BFL or CBL?

9 A. Yes, it's fair to say that.

10 Q. Would you have considered yourself a BFL member at the
11 time?

12 A. No.

13 Q. When you were at the JFK gambling, tell us what happened.

14 A. I was shooting dice. I bent over to get the dice,
15 somebody started shooting. I got grazed in my back.

16 Q. Did you have to go to the hospital for that?

17 A. No.

18 Q. Did anyone else get hit during that?

19 A. Yes.

20 Q. Did that person have to go to the hospital?

21 A. Yes.

22 Q. Did that person survive?

23 A. Yes.

24 Q. Did you see the person that was shooting?

25 A. No.

1 Q. Did you see any -- the shots fired at all?

2 A. Yes, I seen the shots fired.

3 Q. Could you see the appearance of the person, not
4 necessarily the face?

5 A. Yes, not the face though.

6 Q. Did you have an idea, based on the appearance, who the
7 person was that shot you?

8 A. Yes.

9 Q. Who was that?

10 A. I thought it was Jaquan.

11 Q. Up until that point, were you friends with Jaquan?

12 A. Yeah.

13 Q. Did you ever know, in the summer of 2015, Larell Watkins
14 to be shot?

15 A. Yes.

16 Q. Was that before or after you were shot?

17 A. It was after.

18 Q. Were you present when Larell Watkins was shot?

19 A. No.

20 Q. Do you know where he was shot?

21 A. In the Towne Gardens.

22 Q. Did you go after it happened to the -- to where it was?

23 A. No.

24 Q. Did you ever talk to members of the organization about
25 Larell Watkins getting shot?

1 A. Yes.

2 Q. Did you ever talk to Larell Watkins?

3 A. No, not really.

4 Q. Who did you talk to about Larell Watkins getting shot?

5 A. Rees. Rees, Dean, Gucc, Miquise. Like, two more people,
6 I can't remember.

7 Q. And was that a conversation where you were just present
8 and they're talking? Or are you the one that's actually
9 asking questions?

10 A. I was just present.

11 Q. When the shooting occurs, would you ask questions about
12 what happened?

13 A. No.

14 Q. Why not?

15 A. They always talk about it anyways, so it eventually come
16 out.

17 Q. Did you want to be seen as a person who asked questions?

18 A. No.

19 Q. Why not?

20 A. Because they be, like, what you asking questions for?

21 Q. When you said that the shootings naturally come up, what
22 do you mean by that?

23 A. They just be talking, and it randomly come up.

24 Q. Are there certain individuals that we've talked about
25 already that were individuals who you knew would do shootings

1 on behalf of the enterprise?

2 A. Yes.

3 Q. What are some of the individuals that you knew who'd
4 shootings?

5 A. Dal, Larell, Rees.

6 Q. After Larell Watkins -- after you were shot and after
7 Larell Watkins was shot, did you ever go and shoot at Jaquan
8 Sullivan?

9 A. Yes.

10 Q. When was that?

11 A. It was, like, 2015. June, July.

12 Q. You're not sure when?

13 A. No.

14 Q. But it was -- was it after Larell Watkins was shot the
15 first time?

16 A. Yeah, it was after he was shot.

17 Q. How did it come up that you went to go shoot at Jaquan
18 Sullivan?

19 A. I was just around. I was asked did I want to go.

20 Q. All right. Where were you -- when you say "around,"
21 where were you?

22 A. In the Towne Gardens.

23 Q. At a specific building, do you remember?

24 A. No.

25 Q. Who were you with?

1 A. When I went --

2 Q. Who were you with when somebody asked you do you want to
3 go?

4 A. Rees, Miquise, GB and Rees.

5 Q. You said Rees twice. You said Rees, Miquise, GB and
6 Rees?

7 A. Yeah, I meant Larell, I meant.

8 Q. Okay. And were they in a car? Where were you?

9 A. We was in the parking lot.

10 Q. Had they just come back?

11 A. Yes.

12 Q. Do you know where they had come back from?

13 A. No.

14 Q. Who asked you to get in the car?

15 A. Rees.

16 Q. Did you know when you got in the car where you were
17 going?

18 A. Yes.

19 Q. Did you know what you were doing?

20 A. Yes.

21 Q. What were you going to be doing?

22 A. Going to look for Jaquan.

23 Q. Were you going to look for Jaquan in particular, or
24 anyone else?

25 A. Anybody affiliated with Jaquan.

1 Q. Why would you be asked, since you're not a member of BFL?

2 A. Because I was grazed.

3 Q. Why would you get in the car to go look if you're not a
4 member of BFL?

5 A. I guess I wanted revenge.

6 Q. So take us through who was in the car.

7 A. Me, Rees, GB, Larell and Scaife.

8 Q. Where were you in the car?

9 A. I was at the window, back seat.

10 Q. Who was in the back seat with you?

11 A. Larell and Scaife.

12 Q. Who was driving?

13 A. Rees.

14 Q. And who was in the front passenger's seat?

15 A. GB.

16 Q. Who had guns?

17 A. Me and Scaife.

18 Q. What kind of gun did you have?

19 A. I had a .22 revolver.

20 Q. What kind of gun did Scaife have?

21 A. A .9.

22 Q. And Scaife was Miquise Jones?

23 A. Yes.

24 Q. And a .9 is what kind of gun?

25 A. .9 millimeter.

1 Q. Is it a pistol or revolver?

2 A. Pistol.

3 Q. Where did you go? Where did you drive?

4 A. Cornwall.

5 Q. Is that in the Towne Gardens?

6 A. No.

7 Q. What part of the city is Cornwall?

8 A. It's off Delavan.

9 Q. Is that considered uptown?

10 A. Kind of.

11 Q. Why did you go to Cornwall?

12 A. Because that's where we believed Jaquan lived.

13 Q. How would you know where Jaquan lived?

14 A. Well, I knew prior to that, because I used to be over
15 there.

16 Q. And when you got to Cornwall, did you see anyone?

17 A. Yes.

18 Q. Who did you see?

19 A. Jaquan.

20 Q. Did you see anyone that he was with?

21 A. Yes.

22 Q. Who else?

23 A. Daveon and Boonie.

24 Q. Daveon and Boonie? Were they friends with Jaquan?

25 A. Yes.

1 Q. What happened when you got to Cornwall in the car?

2 A. They shot at us, and we shot back.

3 Q. Did they see you and start shooting first?

4 A. Yes.

5 Q. Did you shoot back?

6 A. Yes.

7 Q. Who else shot back?

8 A. Scaife.

9 Q. Do you know if anyone was hit?

10 A. Nobody was hit.

11 Q. Was anyone from Jaquan's group hit?

12 A. No.

13 Q. Was anyone from your group hit?

14 A. No.

15 Q. Was the vehicle struck?

16 A. Yes.

17 Q. Whose vehicle was that that you were driving in?

18 A. GB mom car.

19 Q. And then where did you go after that?

20 A. Back to the Towne Gardens.

21 Q. Did you ever call the police and say Jaquan Sullivan just
22 shot at us?

23 A. No.

24 Q. Why wouldn't you call the police?

25 A. Why would we?

1 Q. Do you know what happened to the gun that you had, the
2 revolver?

3 A. No.

4 Q. Did you give it back to somebody?

5 A. Yes.

6 Q. Who?

7 A. Rees.

8 Q. Do you know what happened to it after that?

9 A. No.

10 Q. Were there some people that were part of CBL or BFL that
11 only sold drugs?

12 A. Yes.

13 Q. Were there some people that were CBL or BFL that only did
14 shootings?

15 A. Yes.

16 Q. Were there some people who did both?

17 A. Yes.

18 Q. In your experience, the members of CBL and BFL, who got
19 the most respect?

20 A. Larell.

21 Q. Why was that?

22 A. I don't know why.

23 Q. Did you know Larell to be a shooter?

24 A. Yes.

25 Q. Now in around the fall, end of summer, beginning of fall

1 of 2015, did you ever see a video posted by the Buffalo
2 police on their Facebook page about a shooting that occurred
3 of a person named DeShaun Goodwin?

4 A. Yes.

5 Q. And how did you see that video?

6 A. On Facebook.

7 Q. And the video that you saw, did you view it on Facebook?

8 A. Yes, I did.

9 Q. And was that posted by a friend of yours, or was that
10 posted by law enforcement?

11 A. Law enforcement.

12 Q. And why did you view that video?

13 A. Because it was getting shared, and I just wanted to see
14 it.

15 Q. Did you recognize anybody in that video?

16 A. Yes.

17 MR. PARISI: If we could play Government Exhibit 31.1
18 which is in evidence subject to that stipulation.

19 BY MR. PARISI:

20 Q. Mr. Humphrey, we're going to play the video, and then I'm
21 going to pause it and ask a few questions, okay?

22 A. Okay.

23 THE CLERK: Are all these videos the same exhibit?

24 MR. PARISI: They are all part of the same exhibit.

25 (31.1 was played.)

1 BY MR. PARISI:

2 Q. Did you recognize the individual that got out of the
3 white car?

4 A. Yes.

5 Q. Who was that?

6 A. Rees.

7 Q. And what's Rees's real name?

8 A. Maurice Rice.

9 MR. PARISI: Can we go over to the other portion?

10 BY MR. PARISI:

11 Q. Do you recognize the person that we see in the blue sweat
12 suit who just walked by?

13 A. That's Lovey.

14 Q. Do you know Lovey's real name?

15 A. I believe you just said it, DeShaun Goodwin.

16 Q. Is Lovey -- do you know, is he part of a gang?

17 A. I don't know.

18 Q. Did you ever -- well, do you know a person name Kameron
19 Rashada?

20 A. Yes.

21 Q. Do you -- do you know Kameron Rashada?

22 A. Played basketball with him, too.

23 Q. Is Kameron a member of a gang?

24 A. Yes.

25 Q. What gang?

1 A. PBC.

2 Q. What area of the city is PBC?

3 A. Delavan and Erb.

4 Q. Did you know Kam when you were living in Scheule before
5 you moved to Towne Gardens?

6 A. Yes.

7 Q. Were you friends with him?

8 A. Yeah.

9 Q. Did you ever learn about a time that Kam was shot?

10 A. Yes.

11 Q. How did you learn that he was shot?

12 A. I heard individuals talking about it.

13 Q. Did you ever -- ever talk to an individual that told you
14 that they did it?

15 A. Yes.

16 Q. Who did you talk to?

17 A. Maurice.

18 Q. Was that -- which -- Maurice what?

19 A. Rice.

20 MR. SPITLER: Objection, Judge, it's outside.

21 THE COURT: No, I disagree. Overruled. Go ahead.

22 BY MR. PARISI:

23 Q. And what did Maurice Rice tell you?

24 A. He shot him in the head.

25 Q. Did he say where he shot him?

1 A. On Norfolk, I believe.

2 Q. Why would Maurice Rice -- again, were you present in a
3 large group when this conversation was happening?

4 A. Yes.

5 Q. Were you asking questions?

6 A. No.

7 Q. Was anybody asking questions?

8 A. No.

9 Q. What was Maurice doing, why was he talking about this?

10 A. He was telling the story.

11 Q. And what was the story he told?

12 A. Telling the story how he rode by, seen him, he got out
13 and he shot him.

14 Q. Did Maurice say who he was with?

15 A. No.

16 Q. Did he -- how did you know about -- that he was shot in
17 the head? Did you know? Was that from Maurice, or something
18 else?

19 A. That was from Facebook.

20 Q. Okay. But did Maurice say he knew where he shot him?

21 A. No.

22 Q. Did you ever learn what happened to Jaquan Sullivan in
23 December of 2015?

24 A. Yes.

25 Q. How did you first learn that Jaquan Sullivan died?

1 A. Facebook.

2 Q. Meaning you saw what?

3 A. A post.

4 Q. Did you ever have a conversation with any individuals who
5 talked to you about what happened surrounding Jaquan's death?

6 A. Yes.

7 Q. Who did you talk to?

8 A. Larell, Rees, Dal.

9 Q. Where were you when you had this conversation?

10 A. In the building.

11 Q. Can you tell us, again, were you asking questions about
12 what happened?

13 A. No.

14 Q. Who was doing the talking?

15 A. Dal, Rees, and Larell.

16 Q. And with respect to what Dal was saying, I want to get to
17 in a minute. Do you remember when this conversation
18 happened?

19 A. No, I don't remember when.

20 Q. Did you take notes or write it down?

21 A. No.

22 Q. Was it -- how long after Jaquan's Sullivan death?

23 A. A week or two.

24 Q. You said in a building. In Towne Gardens?

25 A. Yeah.

1 Q. What building?

2 A. I don't remember what building.

3 Q. Is it in a hallway? Is it in a --

4 A. Hallway, yeah.

5 Q. Is a hallway a place that in the colder weather you guys
6 would spend time?

7 A. Yes.

8 Q. And would you spend time in an apartment that somebody
9 you knew live in those apartments?

10 A. Yes.

11 Q. In the hallways that you -- withdrawn.

12 And so how did the conversation about Jaquan Sullivan
13 come up?

14 A. I don't remember how it came up.

15 Q. Do you remember the defendant Dalvon Curry saying
16 anything about Jaquan Sullivan?

17 A. Yes.

18 Q. What did the defendant say to the group about Jaquan
19 Sullivan?

20 A. I remember him saying he killed him.

21 Q. Did he give any details?

22 A. Yes.

23 Q. What were the details?

24 A. He said him, Lil D and Flock was sitting on the porch
25 smoking. Jaquan walked up, like, yeah, I finally got you now

1 something-something-something. And he said he shot him five
2 times in the chest.

3 Q. Who told you that?

4 A. Dalvon.

5 Q. Did -- were there any other details that Dalvon Curry
6 shared about where Jaquan Sullivan went?

7 A. No. He just said he ran down the street and he fell.

8 Q. Did the defendant Dalvon Curry say anything about the
9 type of gun that was used?

10 A. Yes.

11 Q. What was the type of gun that was used?

12 A. .9 millimeter.

13 Q. How did -- did you ever see Dalvon Curry with a
14 .9 millimeter before that?

15 A. Yes.

16 Q. What kind of .9 millimeter?

17 A. Silver and black.

18 Q. And how did you see Dalvon Curry with a .9 millimeter
19 before Jaquan Sullivan was killed?

20 A. In the buildings, hanging around.

21 Q. Did you see that -- you said it was -- there were
22 radiators, there were vacant apartments and guns that were on
23 them. How did you see that -- like, was it on somebody? Was
24 it in a radiator?

25 A. It was on his hip.

1 Q. Whose hip?

2 A. Dalvon's.

3 Q. After that shooting of Jaquan Sullivan, well, around the
4 time of this conversation where the defendant told you what
5 happened, do you know where that gun was at that time?

6 A. No.

7 Q. Did you ever see that gun again?

8 A. Once.

9 Q. When was that?

10 A. When Laron had it.

11 Q. Laron -- who's Laron?

12 A. Watkins.

13 Q. When was it that Laron had it?

14 A. About three weeks later. Four weeks later. I don't
15 remember exactly when.

16 Q. Is it common that people from BFL or CBL would share
17 firearms?

18 A. Yes.

19 MR. SPITLER: Objection to the leading.

20 THE COURT: No, overruled.

21 MR. PARISI: I'm sorry, what was your answer?

22 THE WITNESS: Yes.

23 BY MR. PARISI:

24 Q. What were the circumstances about how you saw Laron
25 Watkins with the gun?

1 A. He just had the gun.

2 Q. Did you -- what happened then? Did anyone say anything
3 to him?

4 A. Yes.

5 Q. Who?

6 A. Larell.

7 Q. What did Larell say to Laron Watkins?

8 A. What the fuck you doing walking around with that hot-ass
9 gun.

10 Q. And then did Laron say anything?

11 A. No, he was just laughing.

12 Q. What happened then? Do you know what happened to that
13 gun?

14 A. No, I don't.

15 Q. Did you ever talk to anybody about what happened to that
16 gun?

17 A. Yes.

18 Q. Who did you talk to?

19 A. Larell.

20 Q. And were there any other people who were talking about
21 what happened to that gun?

22 A. No, not that I remember.

23 Q. Do you remember where the conversation was with Larell?

24 A. In the building.

25 Q. When you say "the building," do you know what building?

1 A. No. Any building.

2 Q. Any building in the Towne Gardens?

3 A. Yes.

4 Q. And what did Larell tell you about what happened to that
5 gun?

6 MR. SPITLER: Objection, Judge, as to outside the
7 scope.

8 THE CLERK: Overruled.

9 BY MR. PARISI:

10 Q. Go ahead.

11 A. He said it got buried.

12 Q. It what?

13 A. It got buried.

14 Q. What did that mean?

15 A. It got buried under the dirt.

16 Q. Did he say where?

17 A. No.

18 Q. Do you know where that gun was buried?

19 A. No.

20 Q. I want to talk to you about -- is there a time in the
21 summer of 2015 when you were with other individuals from CBL
22 and BFL when you were shot at but not hit in the Towne
23 Gardens?

24 A. Yes. Yes.

25 Q. Do you remember when that was?

1 A. No, I don't remember when.

2 Q. And can you tell us who you were with?

3 A. 90, Rees, Larell, Scaife, Gucc. That's it, I believe.

4 Q. All right. Just so we know the names, 90 is who?

5 A. Lar'Quon.

6 Q. Lar'Quon what?

7 A. Watkins.

8 Q. GB was who?

9 A. Shameris Washington.

10 Q. Scaife was who?

11 A. Miquise Jones.

12 Q. And Gucc was who?

13 A. Dajon Nettles.

14 Q. And where were you walking?

15 A. To the store.

16 Q. What store?

17 A. Jefferson.

18 Q. What store on Jefferson?

19 A. The yellow store. The liquor store.

20 Q. And what happened to you as you crossed the street?

21 A. We got shot at.

22 Q. Was that from an individual? From a car? How did it
23 happen?

24 A. From a car.

25 Q. Tell us how it happened.

1 A. It was riding by. Then it rode back by and started
2 shooting.

3 Q. So they rode by twice?

4 A. Yes.

5 Q. Do you know who was in that car?

6 A. No.

7 Q. Did anybody from your group get struck?

8 A. No.

9 Q. Did anybody from your group shoot back?

10 A. Yes.

11 Q. Who?

12 A. Larell, 90, and Rees.

13 Q. Did anyone else have guns?

14 A. Yeah, everybody had a gun.

15 Q. Did you have a gun?

16 A. No.

17 Q. But only those three shot back?

18 A. Yes.

19 Q. After Jaquan Sullivan, in 2016, did you see less and less
20 of the defendant, Dalvon Curry?

21 A. Yes.

22 Q. Do you know why you saw him less?

23 A. I guess he went out of town.

24 Q. Do you know where he went?

25 A. No.

1 Q. Do you -- were you present in the summer of 2016, in
2 August of 2016, were you present when Laron Watkins was
3 killed?

4 A. Yes.

5 Q. You were there when it happened?

6 A. Oh, no, I wasn't there.

7 Q. Did you go to the scene after it happened?

8 A. No.

9 Q. Did you go to any of the memorials for Laron Watkins that
10 occurred after?

11 A. Yes.

12 Q. Did the -- was the defendant at any of those memorials?

13 A. Only the funeral.

14 Q. There were other memorials besides the funeral?

15 A. Yes.

16 Q. Was the defendant at the funeral?

17 A. Yes.

18 Q. Now I'd like to move forward to New Year's Eve of 2016
19 into 2017. Did you go to a party at 22 Curry Walk in the
20 Towne Gardens?

21 A. Yes.

22 Q. Why did you go to the party?

23 A. I seen everybody was there on SnapChat.

24 Q. You saw it on SnapChat?

25 A. Yes.

1 Q. Did you, where were you before this?

2 A. I was at home.

3 Q. After you saw this, did you decide that you would go
4 there?

5 A. Yeah.

6 Q. Why did you decide to go there?

7 A. Everybody was there.

8 MR. PARISI: Could we pull up what's in evidence as
9 46.39, please. I'm sorry, no. I'm sorry, that one's not in
10 evidence. 106.3, please.

11 THE CLERK: This is in evidence.

12 MR. PARISI: This is in evidence, yes.

13 (106.3 was played.)

14 BY MR. PARISI:

15 Q. Do you recognize who that individual is?

16 A. Yes.

17 Q. Who is that?

18 A. That's Larell.

19 Q. And do you recall seeing this video on New Year's Eve
20 before going out?

21 A. Yes.

22 Q. Is this -- did you see Larell Watkins that night
23 consistent with the clothing he's wearing in this video?

24 A. Yes.

25 MR. PARISI: Can we show what's in evidence as 103.3,

1 please?

2 (103.3 was played.)

3 BY MR. PARISI:

4 Q. Who is that individual that we've paused on?

5 A. Steve.

6 Q. Steve -- what's the last name?

7 A. Major.

8 MR. PARISI: All right. Can we go to the next
9 person, please?

10 BY MR. PARISI:

11 Q. Can you see the -- can you see who that person is?

12 A. Yes.

13 Q. Who's that?

14 A. Dalvon.

15 Q. And was that what Dalvon and Steve were both wearing that
16 night?

17 A. Yes.

18 Q. Did you see these individuals at the New Year's Eve party
19 in the hallway?

20 A. Yes.

21 MR. PARISI: Take that off, please.

22 BY MR. PARISI:

23 Q. Prior to that night, I guess prior to going that night,
24 were you aware if Dalvon Curry had any social media?

25 A. Yes.

1 Q. And were you aware if he had any Facebook accounts?

2 A. Yes.

3 Q. Were you friends with Dalvon Curry on Facebook?

4 A. Yes.

5 Q. Did you have a Facebook account?

6 A. Yes.

7 Q. What was your name on Facebook?

8 A. Hakeem Humphrey.

9 Q. Do you know a person named Xavier Wimes?

10 A. Yes.

11 Q. How do you know Xavier Wimes?

12 A. He's my cousin.

13 Q. Blood cousin?

14 A. Yes.

15 Q. Did you know Xavier Wimes to be someone who hung around

16 the Towne Gardens?

17 A. Yes.

18 Q. And did you know Xavier Wimes to be a member of a gang?

19 A. Yes.

20 Q. What gang?

21 A. CBL.

22 Q. Was Xavier Wimes a person who was known to shoot people?

23 A. No.

24 Q. Was Xavier Wimes a person that was known to deal drugs?

25 A. No.

1 Q. Was -- did you have any information about Xavier Wimes
2 doing any criminal activity?

3 A. No.

4 Q. When you got there, was Xavier Wimes at the party?

5 A. No.

6 Q. When you got there, was the defendant at the party?

7 A. Yes.

8 Q. Was Larell Watkins at the party?

9 A. Yes.

10 Q. What are some of the other -- let's start with -- we'll
11 split it up between men and women.

12 Who were some of the other men that you knew at the
13 party?

14 A. Dean, Gucc, Jordan, Steve, Dolo, Mikel, the other Mikel.
15 That's it, I believe.

16 Q. Were there members of BFL at the party?

17 A. Yes.

18 Q. Were there members of CBL at the party?

19 A. Yes.

20 Q. Was anyone there present who was not a member of BFL or
21 CBL at the party?

22 A. Yes.

23 Q. For the men?

24 A. Yes.

25 Q. Who was that?

1 A. Me.

2 Q. Were there females at the party?

3 A. Yes.

4 Q. Were there more men than females?

5 A. Yes, there was.

6 Q. Did you know the females that were at the party?

7 A. Some of them.

8 Q. Who were the ones that you knew?

9 A. Amya, Diara and Niara.

10 Q. Did you drink any alcohol before you went to the party?

11 A. No.

12 Q. Did you drink any alcohol at the party?

13 A. No.

14 Q. Why not?

15 A. I don't drink.

16 Q. Did you do any drugs before you went to the party?

17 A. Yes.

18 Q. What?

19 A. Weed.

20 Q. Meaning what?

21 A. Smoked a little marijuana.

22 Q. Did you smoke any marijuana at the party?

23 A. No, not really.

24 Q. Well, no, not really, did you --

25 A. Just a little bit. I hit it like three times probably.

1 Q. Were you high from the marijuana?

2 A. No.

3 Q. Does -- how often do you use marijuana?

4 A. Almost every day.

5 Q. Does that affect your ability to see what's happening?

6 A. No.

7 Q. Did that affect your ability to remember what's
8 happening?

9 A. No.

10 Q. Did you have any information of any bad blood between
11 Xavier Wimes and Dalvon Curry before that New Year's Eve
12 party?

13 A. Yes.

14 Q. What did you have? What did you know?

15 A. Stat on Facebook where they was arguing.

16 Q. Who was arguing?

17 A. Dalvon and Xavier.

18 Q. Did you know what they were arguing about?

19 A. No, not really.

20 MR. PARISI: We can show Government Exhibit 46.16,
21 just page 7 to the witness, please? Not in evidence.

22 BY MR. PARISI:

23 Q. Mr. Humphrey, do you see what's on the screen in front of
24 you, Government Exhibit 146.6, page 7?

25 A. Yes.

1 Q. Are you familiar with the name Zave Peso?

2 A. Yes.

3 Q. What is Zave Peso?

4 A. That's Xavier.

5 Q. Xavier Wimes?

6 A. Yes.

7 Q. And is Zave Peso, is that a social media account for him?

8 A. Yes.

9 Q. What -- what social media platform?

10 A. That's Facebook.

11 Q. Have you communicated with Xavier Wimes on this account
12 before?

13 A. Yes.

14 Q. Have you seen Xavier Wimes post on this account before?

15 A. Yes.

16 Q. The person with the Facebook name of Dalvon Curry, do you
17 know who that is?

18 A. Yes.

19 Q. How do you know that?

20 A. Because I know who that is.

21 Q. Are you friends with both of those accounts on Facebook?

22 A. Yes.

23 Q. Have you communicated on Facebook with the account Dalvon
24 Curry prior to New Year's Eve 2016 going into 2017?

25 A. Yes.

1 Q. And, in fact, the profile picture of Dalvon Curry's
2 account, is that a picture -- who is that a picture of?

3 A. Dalvon.

4 MR. PARISI: Your Honor, the government would
5 offer --

6 BY MR. PARISI:

7 Q. And, I'm sorry, is this the Facebook argument that you
8 were referring to when you just testified a few minutes ago?

9 A. Yes.

10 MR. PARISI: The government would offer Government
11 Exhibit 46.16, just page 7 at this time.

12 MR. SPITLER: There will be no objection.

13 THE COURT: Received without objection.

14 MR. PARISI: May we publish to the jury?

15 THE COURT: Yes, you may.

16 **The following was received in Evidence:**

17 **GOVERNMENT EXHIBIT 46.16**

18 BY MR. PARISI:

19 Q. Now that it's in front of the jury, who is Zave Peso?

20 A. That's Xavier Wimes.

21 Q. Who is Dalvon Curry?

22 A. Dalvon Curry.

23 Q. Can you -- is this the Facebook argument that you were
24 telling us about?

25 A. Yes.

1 Q. And what's the last two lines, Mr. Humphrey, and I'm
2 gonna have you read this from the Zave Peso, the last two
3 lines, that starts with stop.

4 A. Stop talking like you tough. I'll make you pick ya gun
5 back up lil boy. You soft as hell.

6 Q. What's the response from Dalvon Curry?

7 A. Same thing the last Nigga said. See you soon.

8 Q. What does it mean when we have that 100 with the
9 underline?

10 A. Fact.

11 Q. I'm sorry, a fact?

12 A. It mean a fact, yes.

13 Q. I'd like to show you some photographs now.

14 THE COURT: These are not in evidence?

15 BY MR. PARISI:

16 Q. These are not in evidence right now. I'm going to show
17 you Government Exhibits 46.90, 46.91, 46.92, 46.93, 46.123,
18 46.124, 46.125, 46.126, 46.127, 46.128, 46.129, and 46.130.
19 Mr. Humphrey, can you look through all those photographs?

20 Did you look through all of those?

21 A. Yes.

22 Q. Do those fairly and accurately depict 22 Curry Walk, both
23 the inside and outside of the building as it existed on
24 January 1st -- December 31st, 2016 into January 1st, 2017?

25 A. Yes.

1 MR. PARISI: Your Honor, the government would offer
2 these exhibits into evidence.

3 MR. SPITLER: No objection.

4 THE COURT: Received without objection.

5 **The following were received in Evidence:**

6 **GOVERNMENT EXHIBIT 46.90**

7 **GOVERNMENT EXHIBIT 46.91**

8 **GOVERNMENT EXHIBIT 46.92**

9 **GOVERNMENT EXHIBIT 46.93**

10 **GOVERNMENT EXHIBITS 46.123 through 46.130**

11 THE COURT: Mr. Parisi, is this a good enough time
12 for lunch break?

13 MR. PARISI: Yes, Your Honor.

14 THE COURT: So, folks, we will break for lunch now.
15 Please remember the instructions that I've given you about not
16 discussing any aspect of this case with anyone. Don't do any
17 research on your own. Don't use tools of technology to
18 research or to communicate electronically with anyone about
19 the case.

20 Don't read or watch or listen to any news coverage
21 about the case if there is any while the trial is in progress.
22 And please remember not to make up your mind as to any fact or
23 issue until all the evidence has been submitted to you, and
24 you are sent to deliberate.

25 Please be back here at 1:30 and we'll start. Thanks.

1 (Jury excused at 12:28 p.m.)

2 THE COURT: Anything you want to put on the record?

3 MR. PARISI: No, Your Honor.

4 MR. SPITLER: No, thank you, Judge.

5 THE COURT: Why don't we meet back here about 20
6 after so that we can talk a little bit about that legal issue.
7 I'm going to take a look at some research now, I hope, and
8 we'll talk about it then. Okay? Thanks, everybody.

9 (Off the record at 12:29 p.m.)

10 (Back on the record at 1:24 p.m.)

11 (Jury not present.)

12 THE CLERK: All rise.

13 THE COURT: Please be seated.

14 THE CLERK: We are back on the record for the jury
15 trial in 17-cr-103, United States of America versus Dalvon
16 Curry.

17 All counsel and parties are present.

18 THE COURT: Okay. So tell me, Mr. Parisi, what the
19 testimony -- exactly what the testimony is going to be, the
20 proposed testimony.

21 MR. PARISI: The testimony would be that on June 19,
22 2019, Hakeem Humphrey sat --

23 THE COURT: So this past June?

24 MR. PARISI: This past June.

25 -- sat on Genesee Street waiting for a bus. And then

1 he saw a truck he was familiar with drive by him that belonged
2 to K-9 who will be identified as Kareem Pryor, who then
3 approached him. And then a minute later, Michael Walker
4 approached him from the other side. Michael Walker sat down
5 next to Mr. Humphrey, and they had a conversation where
6 Michael Walker accused Mr. Humphrey of the killing of Alvin
7 McDowell and then also accused him of snitching on Larell and
8 them.

9 Then Michael Walker and Kareem Pryor then make
10 signals to each other, thumbs up or thumbs down. All this is
11 captured on video. And then they proceed to assault
12 Mr. Humphrey while he's seated, and then it carries into the
13 street.

14 THE COURT: The video carries into the street.

15 How is this shooting related? So I guess your
16 argument is that the assault is evidence of the conspiracy,
17 and the fact that it occurs after the indictment is issued
18 doesn't make it irrelevant to the conspiracy because there's
19 no evidence that the conspiracy ended at any point. This is
20 either evidence of a continuing conspiracy, or is so
21 inextricably intertwined with the conspiracy that you're
22 proving up during the relevant years that it's admissible.

23 I get that, insofar as the retaliation assault for
24 snitching. I think that was the word you used.

25 MR. PARISI: Yes.

1 THE COURT: What about the shooting? How does
2 that --

3 MR. PARISI: Well, that, I mean it's relevant just
4 because that forms the intent for part of the crime, the
5 intent for Michael Walker and Kareem Pryor for doing what they
6 are doing that day.

7 THE COURT: Okay.

8 MR. PARISI: No one here -- there would be no
9 allegations in this case that anyone from BFL/CBL had anything
10 to do with Alvin McDowell --

11 THE COURT: Who is Alvin -- I mean, I've not heard
12 that name.

13 MR. PARISI: He's a member of CBL, and he's a member
14 of it that died the same night as Xavier Wimes was killed.

15 And so their belief is that Xavier Wimes is killed
16 around 1 in the morning. A few hours later, Alvin McDowell is
17 killed. And people are looking for someone to blame who would
18 have a motive to kill a member of CBL or BFL.

19 And that's why they would blame Hakeem Humphrey, who
20 is a blood cousin of Xavier Wimes.

21 THE COURT: For -- for retaliating for Xavier Wimes'
22 death by shooting the other fellow?

23 MR. PARISI: Yes.

24 THE COURT: I see. Okay. So, Mr. Spitler?

25 MR. SPITLER: Judge, I -- I mean, I don't -- I don't

1 see how it can be tied into the conspiracy since it's outside
2 the period of the conspiracy.

3 THE COURT: Yeah, but there's plenty of caselaw that
4 says that the fact that something occurs after an indictment
5 is issued doesn't mean that it's irrelevant to the conspiracy.
6 And I've looked at a couple cases, neither of them
7 particularly on point, but they both seem to stand for that
8 proposition. United States versus Carboni, which is a
9 2nd Circuit decision from 2000, and United States versus
10 Defreitas, D-E-F-R-E-I-T-A-S, a decision by Judge Irizarri in
11 the Eastern District from 2010. And they both stand for the
12 same proposition, that is that the fact that, you know, the
13 indictment is issued, the indictment obviously can't charge
14 future conduct, they can only charge what's occurred, so
15 evidence that is -- that -- that postdates the indictment can
16 still be evidence of a conspiracy, it can be evidence of
17 conspiratorial intent from -- from a previous date.

18 So why isn't this, that? Why isn't the fact that
19 this guy gets beat up presumably, among other things for,
20 the -- I mean, you know, the shooting I think is a little bit
21 removed, but I don't know that that really hurts you.

22 I think if the evidence comes in that he got beat up
23 because he snitched, in Mr. Parisi's words, you want the
24 evidence of the shooting to come in too, or the evidence that
25 they said he shot somebody too because that's sort of

1 innocuous to you, whereas the other part is not so much.

2 But maybe I'm wrong. Maybe I'm wrong.

3 MR. SPITLER: No.

4 THE COURT: I'm trying to put myself in your
5 position. But the point is, the point is, why isn't that
6 evidence relevant even though it's outside the scope? Even
7 though it postdates, why isn't it relevant of a conspiracy
8 that maybe continued, maybe didn't, but is at least evidence
9 of a conspiratorial intent and agreement at some prior date?

10 MR. SPITLER: Well, Judge, I guess when I'm looking
11 at what's the probative value of bringing that up. And by
12 bringing it up, what probative value does it have that isn't
13 outweighed by its prejudicial effect?

14 Because I don't want a juror to sit there and think
15 now my client's -- because my client is clearly in custody.

16 THE COURT: Right.

17 MR. SPITLER: He's arrested August of 2018. The jury
18 is going to know that. So are they now going to say now he's
19 still part of a conspiracy, he's still pulling the strings,
20 he's directing these two guys to go out after Humphrey. And
21 how do I blunt that?

22 THE COURT: Yeah. What about that? I had not
23 thought about it from that perspective, the prejudicial
24 effect, the undue prejudicial effect versus the probative
25 value. What does it add to your case? And isn't Mr. Spitler

1 right that in light of the fact that Mr. Curry's in custody at
2 the time that it may lead to some conclusions that are
3 unwarranted conclusions?

4 MR. PARISI: Well, the conclusions that we're asking
5 the jurors to draw in this case are that there was a
6 conspiracy that formed, and the conspiracy continued
7 throughout the time period in the indictment and a little
8 before and maybe a little after. And so the government has to
9 prove those allegations.

10 And the proof is not that -- and they're going to
11 hear that when an individual went to jail, as we already heard
12 testimony from, they transferred their phone and they
13 transfer -- evidence happens when a person -- the conspiracy
14 keeps going.

15 And part of what the government has to prove and what
16 this Court will charge the jury is that the conspiracy is a
17 threat to continued activity. And there's an action that
18 occurs outside the time period of indictment that's
19 retaliating for a person who actually cooperated with the
20 indictment which is not prejudicial because that's evidence of
21 the actual conspiracy. It's evidence of the racketeering acts
22 that the government has to prove, the conspiracy to commit
23 witness tampering, the conspiracy to commit witness
24 retaliation.

25 Whether the defendant is in jail or not is largely

1 irrelevant to the fact that the government has to prove that
2 the conspiracy continued and was in danger of continuing
3 throughout the course of its existence.

4 THE COURT: Yeah, it's a closer call than I thought
5 it was, Mr. Spitler, but I agree with Mr. Parisi. I'm going
6 to let it in. I'm going to let it in.

7 MR. SPITLER: Okay.

8 THE COURT: I understand the objection. I think
9 you've done a good job of giving me something to think about,
10 and I've thought about it. But I do think that on the balance
11 of the undue prejudicial effect and probative value, I think
12 Mr. Parisi is right. I think it's -- as I say, I think it's a
13 closer question than I thought it was when I took the bench.
14 You've made me think about it, but I think I'm going to let it
15 in.

16 MR. SPITLER: The -- my objection will then be placed
17 at the time --

18 THE COURT: Absolutely.

19 MR. SPITLER: Okay.

20 THE COURT: Yeah. Just object. Yeah, just object,
21 outside the scope.

22 MR. SPITLER: Outside the scope? Very good.

23 THE COURT: Yeah, and I think it's been preserved
24 already now.

25 MR. SPITLER: I believe it is.

1 THE COURT: But just for belt and suspenders, object
2 at that time, too, okay?

3 MR. SPITLER: Yes, Judge.

4 THE COURT: Great. Okay. Anything else we should do
5 before we bring them back in?

6 MR. PARISI: Just return the --

7 THE COURT: Oh, right.

8 MR. PARISI: -- witness to the stand.

9 THE COURT: Thank you.

10 MR. PARISI: But nothing else, Your Honor.

11 THE COURT: Yes. Okay. Thank you.

12 (Hakeem Humphrey seated at 1:34 p.m.)

13 THE COURT: So I've just been told that some of the
14 jurors brought in some baked goods that they have wanted to
15 share with my chambers. I'm going to decline those baked
16 goods, but I thought I should tell the lawyers that. So we're
17 going to send them back. I will think of something suitable
18 to tell them about why I'm declining the baked goods, probably
19 something to do with my girth, but we'll decline the baked
20 goods.

21 Okay. Let's bring them in. Thanks.

22 (Jury seated at 1:35 p.m.)

23 THE COURT: Okay. Welcome back, everyone. The
24 record will reflect all our jurors are present.

25 I understand, folks, that you've brought in some

1 baked goods and wanted to share them with my chambers. I've
2 been told that this black is very slimming on me, but the last
3 thing I need is baked goods, my wife will tell you that. And
4 my staff also does not want to be tempted by them, so we're
5 going to very respectfully decline them. But I'm very
6 grateful that you folks would think of me, so thank you very
7 much.

8 I remind the witness he's still under oath.

9 And you may continue.

10 MR. PARISI: Thank you.

11 BY MR. PARISI:

12 Q. Mr. Humphrey, when we stopped, we were discussing New
13 Year's Eve 2016 into 2017. Did you go to 22 Curry Walk on
14 New Year's Eve?

15 A. Yes.

16 Q. And did you -- when did you get there?

17 A. Probably 11, 11:30.

18 Q. Is that before midnight or after midnight?

19 A. Before.

20 Q. Were you present when it was midnight and turned to a new
21 year?

22 A. Yes.

23 Q. What part of the building at 22 Curry Walk were you
24 spending time in?

25 A. The front -- back half. The back half.

1 Q. And was that in a stairwell -- excuse me. Was that in a
2 stairwell? Was that in an apartment?

3 A. Yes, stairwell.

4 Q. Now at some point after midnight, did you see Xavier
5 Wimes?

6 A. Yes.

7 Q. Do you know what time it was, or no?

8 A. No, I don't know what time it was.

9 Q. Had you seen Xavier Wimes at that party prior to him
10 appearing after midnight?

11 A. No.

12 Q. Did you know that he was going to be at that party?

13 A. No.

14 Q. When he came to the party, did he come to 22 Curry Walk?

15 A. Yes.

16 Q. What happened when he came there?

17 A. He came, slapped everybody up, was making his way
18 upstairs. And when he got to Dalvon, he hit him in the head
19 with a bottle.

20 Q. Where were you?

21 A. I was by the window landing.

22 Q. I'm sorry?

23 A. By the window landing.

24 Q. On -- you said window landing?

25 A. Yes, the window landing.

1 Q. And where was Dalvon?

2 A. The top. The top landing.

3 Q. And you said Xavier came in, slapped everybody up, and
4 went right up there?

5 A. Um-hum.

6 Q. Did Xavier have anything in his hands?

7 A. Yes, a liquor bottle.

8 Q. Where did he hit Dalvon?

9 A. In the head.

10 Q. What happened to Dalvon Curry?

11 A. He fell on the floor.

12 Q. What happened to Xavier?

13 A. He got jumped.

14 Q. Who jumped him?

15 A. Dean, Larell, Gucc, L-O, Dolo, the other Mikel --

16 Q. When you --

17 A. -- GB.

18 Q. Sorry. When you say "jumped," what do you mean?

19 A. Punched, kicked.

20 Q. And was it all those individuals fighting Xavier Wimes?

21 A. Yes.

22 Q. Was anybody helping Xavier?

23 A. Steve.

24 Q. Steve who?

25 A. Steve Major.

1 Q. Were you able to see from where you were?

2 A. Yes.

3 Q. Did you see what happened to Xavier?

4 A. Yes.

5 Q. What did you see?

6 A. I see Steve push everybody back, and he got up and ran in
7 Ms. Felicia house.

8 Q. Who did?

9 A. Xavier.

10 MR. PARISI: Can we show 46.93, please?

11 THE COURT: This is in evidence?

12 MR. PARISI: This is in evidence.

13 BY MR. PARISI:

14 Q. Mr. Humphrey, before the break you were discussing some
15 of these photographs. Do you see -- well, what do you see in
16 this photograph?

17 A. 22 Curry Walk hallway.

18 Q. How many floors are there in 22 Curry Walk?

19 A. The basement, the first floor, and second floor, so
20 three.

21 Q. And what floor is this?

22 A. The second.

23 Q. The top floor?

24 A. Yeah, the top one.

25 Q. Where would you have been on that night on New Year's

1 Eve?

2 A. How this picture was taken, I'm right there. This my
3 point of view.

4 Q. Where did you see Xavier hit Dalvon?

5 A. About right here.

6 Q. Now we see an open door in this photograph close to us.
7 Is that in that doorway?

8 A. Yeah.

9 Q. And that's what you marked, right?

10 A. Yes.

11 Q. Did you see where -- the apartment that Xavier went into?

12 A. Yeah, 10, but you can't see the door he went in.

13 Q. Were you able to see him actually get inside the
14 apartment, or no?

15 A. No.

16 Q. Did you see Xavier leave your view and go towards an
17 apartment?

18 A. Yes.

19 Q. What happened once you saw Xavier leave your view and go
20 towards that apartment?

21 A. Larell said, I swear to God on my brother I'm gonna kill
22 him. He not leaving this building alive.

23 Q. Larell said that?

24 A. Yeah, Larell Watkins.

25 Q. Where was Larell?

1 A. Standing on that landing, by door 9, trying to get Dal
2 up.

3 Q. And did Larell get Dal up?

4 A. Yes, he did.

5 Q. Did he do anything before getting Dal up?

6 A. No.

7 Q. What happened then?

8 A. He walked him down the stairs. He stopped at the door,
9 was at 4, 5, one of them. Got a gun out the door.

10 Q. And -- and who were the two that were walking down the
11 stairs together?

12 A. Dal and Larell.

13 Q. Did you see any injuries on Dalvon?

14 A. Yes.

15 Q. What did you see?

16 A. He was bleeding from, like, his forehead.

17 Q. Now can you describe, was it a lot of blood? Was it a
18 little bit of blood?

19 A. Nah, it wasn't a lot of blood.

20 Q. Did anyone go up to help Dalvon, like to help him with
21 his cut?

22 A. No, not that I remember.

23 Q. Did you see anyone touching his cut?

24 A. No.

25 Q. Did you see anyone give him a bandage?

1 A. No.

2 Q. But you did see Larell walking him out, you said?

3 A. Yes.

4 Q. What did you see next? Was any -- well, where was
5 everyone else when Larell and Dalvon walked past you?

6 A. Outside the building.

7 Q. Were there people still up in the building?

8 A. No, people was leaving.

9 MR. PARISI: Can we show Government Exhibit 46.92,
10 please, which is in evidence.

11 BY MR. PARISI:

12 Q. Do you see the window or the landing -- window landing
13 you said where you were on New Year's Eve in this photograph?

14 A. Yes.

15 Q. Can you please point to it and describe it for us,
16 please?

17 A. It's open. It's right here. This one right there.

18 Q. And so in the middle of that building, it's the middle
19 window?

20 A. No, it's the window to the right.

21 Q. I'm sorry, but it's the middle -- it's the second window
22 from the top?

23 A. Yes.

24 Q. Did you see from that vantage point where Dalvon and
25 Larell went?

1 A. Yes.

2 Q. Where?

3 A. They walked to Larell Jeep.

4 Q. Where was Larell's Jeep parked?

5 A. In the parking lot.

6 MR. PARISI: Can we show Government Exhibit 46.70,
7 please?

8 BY MR. PARISI:

9 Q. Do you recognize any of the vehicles?

10 A. Yes.

11 Q. Which one?

12 A. That burgundy Jeep.

13 Q. Whose burgundy Jeep was that?

14 A. That's Larell car.

15 Q. Had you seen Larell driving that car before that night?

16 A. Yes.

17 MR. PARISI: Can we show 46.125, please? That's in
18 evidence.

19 BY MR. PARISI:

20 Q. Do you recognize 46.125?

21 A. Yes.

22 Q. What is that?

23 A. It's the window.

24 Q. Was that the landing that you were at during -- when
25 Xavier hit Dalvon?

1 A. Yes.

2 Q. Did you look outside when you said Larell and Dalvon went
3 outside?

4 A. Yes.

5 Q. Did you see them go down the walkway that we see here?

6 A. Yes.

7 Q. Which way did they walk?

8 A. Towards the parking lot, to the right.

9 Q. Did you continue to watch them all the way to the Jeep?

10 A. Yes.

11 Q. What did you see then?

12 A. Seen them sitting at the car with the door open. I seen
13 Larell pass Dalvon something.

14 Q. Do you know what it was? Well, did you see what it was?

15 A. I don't see what it was.

16 MR. PARISI: Can we show 46.127, please?

17 BY MR. PARISI:

18 Q. Do you see what's in this photograph?

19 A. Six, seven cars.

20 Q. And, well, does this show where you were looking out of
21 from the window?

22 A. Yeah.

23 Q. How were you looking out the window? Did you have to
24 lean out the window, or you --

25 A. Yeah, I leaned out the window.

1 Q. Why were you looking out the window?

2 A. Because he said he was gonna kill him, so I'm watching to
3 see what they doing.

4 Q. Now, is this photograph from that night?

5 A. No, it's not.

6 Q. Are the vehicles that are in the parking lot the same as
7 the vehicles that were there on New Year's Eve?

8 A. No.

9 Q. Do you know if you can look at this photograph where
10 Larell's vehicle would have been parked looking at this
11 photograph?

12 A. Yeah.

13 Q. Can you please point to it?

14 A. This white Impala right there.

15 Q. So it's parked where that white Impala is, correct?

16 A. Yes.

17 MR. PARISI: Can we just zoom in on this area,
18 please?

19 BY MR. PARISI:

20 Q. And there seems to be a brown spot in the ground there?

21 A. Yes.

22 Q. What was that?

23 A. Tree.

24 Q. Was there a tree there at the time when you were looking
25 on New Year's Eve?

1 A. Yes.

2 Q. But the tree is not in this picture, correct?

3 A. No, it's not.

4 Q. Did that tree obstruct your view of the individuals who
5 you saw walking towards the Jeep?

6 A. No.

7 Q. After you -- sorry, withdrawn. Do you ever see Xavier
8 leave that apartment?

9 A. Do I see him leave? No.

10 Q. Do you see him leaving that hallway from that apartment?

11 A. No.

12 Q. Did you ever see --

13 MR. PARISI: You can take that down, please.

14 BY MR. PARISI:

15 Q. Did you ever see Xavier again outside?

16 A. Yes.

17 Q. What did you see?

18 A. I seen him limping.

19 Q. How did you see him?

20 A. I seen him out the window.

21 MR. PARISI: I'm sorry, can you put that back up,
22 please? 46.127.

23 BY MR. PARISI:

24 Q. Did you see his whole body? Did you see part of him?

25 A. I seen his whole body when he went to go around the tree.

1 Q. And then did he continue going to the left of the tree,
2 or did he go back inside?

3 A. He just kept going straight.

4 Q. Did you eventually -- did he get out of your view?

5 A. Yes.

6 Q. How long did you see him for?

7 A. For a good two minutes.

8 Q. Now, you're saying two minutes like an actual two
9 minutes, or a short time, or a --

10 A. A short time.

11 Q. How long was it from the time that Xavier hit Dalvon with
12 the bottle until you saw Xavier outside?

13 A. About 15, ten minutes.

14 Q. Where was Dalvon Curry during that after he left with
15 Larell, where was Dalvon?

16 A. Sitting in the Jeep.

17 Q. Where was Larell?

18 A. Right with him.

19 Q. Were you staring outside the whole time, or did you put
20 your head back in at some point?

21 A. Staring outside the whole time.

22 Q. Did you check in, look in to see what's going on with
23 Xavier to see if he's coming out?

24 A. Yeah.

25 Q. So were you staring outside the whole time, or were you

1 looking back and forth?

2 A. I was looking back and forth, but I only looked back for
3 a brief second.

4 Q. Okay. After you see Xavier limping, what's the next
5 thing you see?

6 A. I see Larell and Dal.

7 Q. What happens?

8 A. Dal shoot him two times, and I can't see nothing else
9 after that.

10 Q. Where are they when that shooting happens?

11 A. 'Bout right behind -- right by the tree. Aside of the
12 tree. And after the two shots, I couldn't see nothing else
13 because he move.

14 Q. Who moves?

15 A. Xavier.

16 Q. What about Dalvon, does he stay there? Or does he move?

17 A. He moved closer to Xavier.

18 Q. Does that go out of your view?

19 A. Yes.

20 Q. Where did Larell go?

21 A. He was still standing in the same spot.

22 Q. You said you saw two shots?

23 A. Yes.

24 Q. How did you see a shot?

25 A. He walked up to him, he shot him two times when he was

1 still in my view. I seen it.

2 Q. What did you see? Did you see a flash?

3 A. Yeah, the flash.

4 Q. Could you make out a gun from that far?

5 A. No.

6 Q. After they moved out of your view, did you hear anything?

7 A. Yes.

8 Q. What did you hear?

9 A. About five more shots.

10 Q. Then what do you see?

11 A. I see Dal and Larell running and the cops pull up.

12 Q. Are the police there almost immediately?

13 A. Yes.

14 Q. Did you go outside when you saw Xavier limping?

15 A. No.

16 Q. Why didn't you go outside?

17 A. I don't know.

18 Q. Were you able to make out Dalvon Curry's face from the
19 window that you were at?

20 A. No.

21 Q. How were you able to tell that it was Dalvon?

22 A. The clothes.

23 Q. Were you able to make out Larell Watkins' face from the
24 window that you were at?

25 A. No.

1 Q. How were you able to tell it was Larell Watkins?

2 A. The clothes.

3 Q. Were there other people that were outside of that
4 apartment building besides Xavier, Larell and Dalvon?

5 A. Yes.

6 Q. How many people?

7 A. About seven, eight.

8 Q. And where were those people when the shooting happened?

9 A. Standing in front of the door.

10 Q. Can you show us on the picture what door you're talking
11 about?

12 A. Nah, you can't see it in this picture.

13 Q. Is it in front of the 22 Curry Walk door?

14 A. Yes.

15 Q. So, by Larell's Jeep where the shooting happened, how
16 many people were over there?

17 A. Just two.

18 Q. Who were they?

19 A. Larell and Dal.

20 Q. Did you see Larell and Dal run?

21 A. Yes.

22 Q. Where did they run?

23 A. They ran towards the left.

24 MR. PARISI: If you can show what's in evidence as
25 Government Exhibit 46.129.

1 BY MR. PARISI:

2 Q. Do you recognize what we're looking at here?

3 A. Yes.

4 Q. And can you just circle the window that you were
5 discussing previously?

6 And you circled in the middle of the photograph above
7 that awning, the window that we see on the left, correct?

8 A. Yes.

9 Q. And what is that that you circled?

10 A. That's where I was looking out at.

11 MR. PARISI: Can we show Government Exhibit 46.130,
12 please.

13 BY MR. PARISI:

14 Q. And does -- do you see the window where you were at in
15 this view?

16 A. Yes.

17 Q. And do you see where Larell Watkins' Jeep was in the
18 parking lot?

19 A. Yes.

20 Q. And which car -- which area was the Larell Watkins Jeep?

21 A. About the white Impala.

22 Q. After you saw the police, did you go downstairs?

23 A. Yes.

24 Q. And did you run away?

25 A. No.

1 Q. What did you do?

2 A. I sat there and waited.

3 Q. Did you recognize any police officers?

4 A. Yes.

5 Q. Who did you recognize?

6 A. Nick Parisi.

7 Q. And this officer, did you know him from before this
8 night?

9 A. Yes.

10 Q. How did you know him?

11 A. He's my football coach.

12 Q. What school?

13 A. Timon.

14 Q. And do you know if he saw you that night?

15 A. Yes.

16 Q. How long did you stay in the area of 22 Curry Walk?

17 A. About ten minutes after that. Then I left.

18 Q. After you see Dalvon Curry fire the two shots, how long
19 is it until you hear the additional shots when he moves out
20 of view?

21 A. Seconds.

22 Q. How did you feel after going -- well, did you see Xavier
23 when he went outside?

24 A. Yeah.

25 Q. And how did you feel when you saw Xavier?

1 A. Sad. Mad.

2 Q. Were you upset?

3 A. Yeah.

4 Q. Did your relationship with CBL and BFL change after that
5 night?

6 A. Yeah.

7 Q. Why?

8 A. 'Cuz they just killed my cousin.

9 Q. Did you then, following that, take to social media to
10 start to argue with people about that?

11 A. Yes.

12 Q. Who did you argue with about that?

13 A. Dal cousin and other people of BFL gang.

14 Q. Do you know Dal's cousin?

15 A. Shanna.

16 Q. Do you know her last name?

17 A. No.

18 Q. Was she at the party that night?

19 A. No.

20 Q. And why were you arguing with her?

21 A. Because I was just upset.

22 Q. And did you threaten Dalvon?

23 A. Yeah.

24 Q. On social media?

25 A. Yeah.

1 Q. Did you threaten anyone else on social media?

2 A. Yeah, his whole family.

3 Q. Did you threaten Larell?

4 A. Nah.

5 Q. Did you threaten anyone else?

6 A. No.

7 Q. Why did you do that?

8 A. 'Cuz Dal is the one who killed him.

9 Q. I want to talk to you about January 27th, 2017 on Hickory
10 Street at about 5 p.m. Were you there at the time and place
11 when you saw a vehicle?

12 A. Yes.

13 Q. What happened?

14 A. Tried to, like, run me over.

15 Q. Who?

16 A. Larell.

17 Q. Do you know what Larell was driving that night?

18 A. Silver van, I believe.

19 Q. How did you know it was Larell?

20 A. I seen him.

21 Q. Driving?

22 A. Yes.

23 Q. And tell us how he tried to run you over.

24 A. I'm walking across the street. He, like, tried to run me
25 over, but he couldn't run me over because I was almost

1 already on the sidewalk.

2 Q. What happened after he tried to drive towards you?

3 A. He shot at me like three times.

4 Q. Did he hit you?

5 A. No.

6 Q. Did the police come that night?

7 A. No.

8 Q. Did you call the police that night?

9 A. No.

10 Q. Did there come a point in time you moved out of the Towne
11 Gardens after all of this?

12 A. Yes.

13 Q. When was that?

14 A. About April.

15 Q. Of what year?

16 A. 2017.

17 Q. Why did you leave?

18 A. 'Cuz I ain't feel comfortable down there.

19 Q. After the time on Hickory Street with Larell in the van
20 when he shot at you, is there a point in time where you
21 reached out to a police officer that you know?

22 A. Yes.

23 Q. Who did you reach out to?

24 A. Parisi.

25 Q. And that's not me, right?

1 A. No, it's not you.

2 Q. And did you -- why did you reach out to Officer Parisi?

3 A. 'Cuz I wanted to come forward.

4 Q. Did you then, using Officer Parisi, make arrangements to
5 speak to homicide detectives?

6 A. Yes.

7 Q. And did you talk to homicide detectives on January 31st
8 of 2017?

9 A. Yes.

10 Q. What is your relationship with the police in general?

11 A. I don't like the police.

12 Q. Why not?

13 A. 'Cuz, I just don't.

14 Q. Is reporting crimes to the police something that you
15 would do?

16 A. No.

17 Q. Why not?

18 A. I just wouldn't.

19 Q. Why wouldn't you?

20 A. 'Cuz I don't feel like that's right.

21 Q. Why isn't that right?

22 A. 'Cuz that's snitching.

23 Q. What does "snitching" mean to you?

24 A. Telling.

25 Q. And you say "telling," you mean telling what?

1 A. Telling on crimes.

2 Q. And what is your understanding of what, if you snitch,
3 what's going to happen to you?

4 A. You would die.

5 Q. How so?

6 A. You're gonna get killed.

7 Q. By who?

8 A. Whoever you told on, or whoever they associated with.

9 Q. Were you afraid of retaliation if you talked to the
10 police?

11 A. Yes.

12 Q. So when you talked to the detectives on January 31st, did
13 you tell them that you were there?

14 A. I did tell them I was there, but I told them I ran.

15 Q. You told them you ran at what point?

16 A. Before the shots was fired.

17 Q. So you told them you did not see -- did you tell them you
18 saw the shooting, or no?

19 A. No.

20 Q. You told them you ran where?

21 A. Home.

22 Q. Why did you tell them that you ran home and that you
23 weren't there when the shooting happened?

24 A. Because I didn't want to be in this predicament right
25 here.

1 Q. What predicament is that?

2 A. Being on the stand.

3 Q. Did you want Larell and Dalvon to get in trouble for what
4 they did?

5 A. Yeah.

6 Q. Did you want to be the one that got them in trouble?

7 A. No.

8 Q. Why not?

9 A. I just wouldn't.

10 Q. Did you know when you talked to the police that Officer
11 Parisi saw you at the scene that night?

12 A. Yeah.

13 Q. And so you knew the police would know that it wasn't true
14 that you ran home?

15 A. Yeah.

16 Q. Now after April of 2017 when you move out of the Towne
17 Gardens, I want to talk to you about June 19 of 2019.

18 Were you on Genesee Street on the border of Cheektowaga
19 and Buffalo?

20 A. Yes.

21 Q. And about 11 a.m., what were you doing?

22 A. I was waiting on a bus.

23 Q. Did something happen to you while you were waiting on the
24 bus?

25 A. Yeah.

1 Q. What happened to you?

2 A. I was jumped.

3 Q. Was that captured on video?

4 A. Yeah, it was.

5 Q. I'd like to show you what's marked for identification as
6 Government Exhibit 64. Do you recognize your initials on
7 Government Exhibit 64?

8 A. Yes.

9 Q. Have you viewed this today -- or, I'm sorry, have you
10 viewed this before testifying today?

11 A. Yes.

12 Q. Is this a fair and accurate depiction of the assault that
13 occurred of you on June 19, 2017?

14 A. Yes.

15 MR. PARISI: Your Honor, the government would offer
16 Government Exhibit 64.

17 MR. SPITLER: There's no objection.

18 THE COURT: Received without objection.

19 **The following was received in Evidence:**

20 **GOVERNMENT EXHIBIT 64**

21 MR. PARISI: If we can go to about 11:18, please.

22 I'm sorry, Ms. Rebisz, can you go back a little bit? Stop it
23 there, please.

24 BY MR. PARISI:

25 Q. Now we've stopped it at 11:12:35. Mr. Humphrey, do you

1 see yourself on the video?

2 A. Yes.

3 Q. We see two individuals. Which one are you?

4 A. I'm the one wearing the wife beater.

5 Q. Are you at the top of the screen walking down?

6 A. Yes.

7 Q. The person that is seated to us closest to us, do you
8 know who that person is?

9 A. No.

10 Q. Was this a bus stop?

11 A. Yes.

12 Q. All right. And while you are seated, after you sit down,
13 do you notice any cars that you recognize?

14 A. Yes.

15 Q. What car do you notice?

16 A. A truck.

17 Q. What do you notice about that truck?

18 A. The person in it.

19 Q. And who is the person that was in that truck?

20 A. K-9.

21 Q. K-9 that you told us about earlier?

22 A. Yes.

23 MR. PARISI: Can we go to 11:18, please? Can you
24 press -- I'm sorry, can you go back? Right there. Can you
25 press play, please?

1 (64 was played.)

2 BY MR. PARISI:

3 Q. Can you tell us when you view the truck that you saw?

4 A. Right there.

5 Q. That passed at 11:18:25?

6 A. Um-hum.

7 Q. That's yes?

8 A. Yes.

9 MR. PARISI: Can you go to 11:19:30, please.

10 BY MR. PARISI:

11 Q. After you see that truck --

12 MR. PARISI: You can play it, please.

13 BY MR. PARISI:

14 Q. -- do you recognize any individuals that come after you
15 see that vehicle?

16 A. Yes. Right there.

17 Q. And can you describe what that person is wearing?

18 A. Gray sweatpants, a white shirt.

19 Q. Who did you recognize that person as?

20 A. K-9.

21 (64 was played.)

22 MR. PARISI: If we can pause it there, please.

23 BY MR. PARISI:

24 Q. We saw that person you identified as K-9 walking in front
25 of you?

1 A. Yes.

2 Q. Why did you stay there?

3 A. I'm not paying no attention.

4 Q. Were you thinking anything was going to happen?

5 A. No.

6 Q. Did he say anything to you when he walked by you?

7 A. No.

8 MR. PARISI: Can you play, please?

9 (64 was played.)

10 BY MR. PARISI:

11 Q. Let us know if you recognize any other individuals that
12 appear on the screen.

13 A. At the top of the screen.

14 Q. Who is that that you recognize at the top of the screen?

15 A. That's Yam.

16 Q. Yam? Yam -- what's Yam's real name?

17 A. Michael Walker.

18 MR. PARISI: Can you pause, please? And you can
19 play, please.

20 (64 was played.)

21 BY MR. PARISI:

22 Q. What's Yam doing?

23 A. Trying to talk to me.

24 Q. Does he sit down next to you?

25 A. Yeah.

1 MR. PARISI: Can you pause it, please?

2 BY MR. PARISI:

3 Q. Can you take us through -- are you talking to Yam?

4 A. Yeah, but not really, because I'm still on the phone.

5 Q. And is he talking to you while you're on the phone?

6 A. Yeah.

7 Q. What is he saying to you?

8 A. He asked me did I kill Duke, and did I tell on Larell?

9 Q. And, well, so I want to break that down a little bit.

10 He talks to you for a few minutes; is that fair to say?

11 A. Yes.

12 Q. And is it a one-second conversation that he has with you?

13 Or is it over the period of the two or three minutes that
14 he's with you?

15 A. Two or three minutes.

16 Q. And you said he talks to you about asking you if you
17 killed Duke?

18 A. Yes.

19 Q. Who's Duke?

20 MR. SPITLER: Objection, Your Honor. Outside the
21 scope.

22 THE COURT: Yeah, sustained. Or, overruled, I'm
23 sorry. Overruled. Yes.

24 BY MR. PARISI:

25 Q. Who's Duke?

1 A. Somebody from CBL/31.

2 Q. And what happened to Duke?

3 A. He died.

4 Q. Do you know when he died?

5 A. The same night Zave died.

6 Q. Before or after?

7 A. After.

8 Q. Did you have anything to do with Duke's death?

9 A. No.

10 Q. Did -- why would Michael Walker talk to you?

11 MR. SPITLER: Objection, as to operation of
12 Mr. Walker's mind.

13 THE COURT: Sustained.

14 BY MR. PARISI:

15 Q. Now there was another statement that you said Michael
16 Walker made to you. What else did he say besides what to do
17 with Duke?

18 MR. SPITLER: Objection as to anything else.

19 THE COURT: Overruled.

20 MR. SPITLER: Outside the scope.

21 THE COURT: Overruled.

22 BY MR. PARISI:

23 Q. I'm sorry, go ahead. What else did he say?

24 A. He asked me did I tell on Larell.

25 Q. And did he say Larell -- did he just say Larell, or did

1 he say anyone else?

2 A. No, Larell and them.

3 Q. I'm sorry?

4 A. Larell and them. Them his exact words.

5 Q. What did you take that to mean, Larell and them?

6 MR. SPITLER: Objection as to that, again, calls for
7 the state of mind as to what the speaker said as to what he
8 said, or I mean, as to how he interpreted it.

9 THE COURT: No, I don't think so, I think that's
10 exactly what he's asking is how he interpreted it. So,
11 overruled.

12 BY MR. PARISI:

13 Q. What did you take it when he said "Larell and them" to
14 mean?

15 A. As in BFL.

16 Q. And did he keep asking you these questions?

17 A. Yes, over and over again.

18 Q. What was your response?

19 A. I kept telling him no, no.

20 Q. Had you given the statement to the Buffalo police prior
21 to this video that we talked about?

22 A. Yes.

23 Q. Had you testified in the federal grand jury in this
24 matter prior to this video?

25 A. Yes.

1 MR. PARISI: Your Honor, if we could just play the
2 remainder of the video starting at 11:21:10.

3 (64 was played.)

4 BY MR. PARISI:

5 Q. Mr. Humphrey, we can now pause that video. Did the
6 police eventually come?

7 A. Yeah.

8 Q. Did you go to a hospital?

9 A. Yeah.

10 Q. What's the last -- well, do you have a memory of this
11 event?

12 A. No.

13 Q. What's the last thing you do remember?

14 A. Talking.

15 Q. Talking to who?

16 A. Yam.

17 Q. And we just saw what happened. What's the last thing in
18 this event -- do you remember any of the assault?

19 A. No.

20 Q. Do you remember the -- not even the first punch,
21 anything?

22 A. No.

23 Q. But you do remember the talking to Yam?

24 A. Yes.

25 Q. And you remember everything before that?

1 A. Yeah.

2 Q. What hospital did you go to?

3 A. ECMC.

4 Q. Were you treated for injuries?

5 A. Yes.

6 Q. What injuries?

7 A. I had a concussion and a broken shoulder.

8 Q. Were you released later that night?

9 A. Yeah.

10 Q. Mr. Humphrey, I'm going to show you what's marked for
11 identification as Government Exhibit 64.23 and 64.24. Do you
12 recognize what 64.23 is?

13 A. Yes.

14 Q. Is this something that you viewed that law enforcement
15 showed you?

16 A. Yeah.

17 Q. And is this a series of photographs that you viewed to
18 identify an individual?

19 A. Yeah.

20 Q. And did you identify an individual?

21 A. Yes, I did.

22 Q. Are your circle -- is your circle on there?

23 A. Yeah.

24 Q. Is your initials on there?

25 A. Yeah.

1 Q. Is this an exact copy of the original photo array that
2 you looked at and created?

3 A. Yeah.

4 Q. Showing 64.24, do you recognize what that is?

5 A. Yeah.

6 Q. What is that?

7 A. The same picture array.

8 Q. Well, is it --

9 A. Different images, yeah.

10 Q. And who is in this image?

11 A. Yam.

12 Q. Did you circle in this one?

13 A. Yeah.

14 Q. Are your initials in this one?

15 A. Yeah.

16 Q. Is this an exact copy of the same photo array that you
17 saw and initialed and circled both on July -- I'm sorry, both
18 in July of 2019 -- July 24, 201?

19 A. Yes.

20 MR. PARISI: Your Honor, the government will offer
21 Government Exhibit 64.23 and 64.24 into evidence.

22 MR. SPITLER: No objection.

23 THE COURT: Received without objection.

24 **The following were received in Evidence:**

25 **GOVERNMENT EXHIBIT 64.23**

1 **GOVERNMENT EXHIBIT 64.24**

2 BY MR. PARISI:

3 Q. Did members of the Cheektowaga Police Department show you
4 this?

5 A. Yes.

6 Q. And who did you identify in this photograph, what number?

7 A. 2.

8 Q. Did we see your circle?

9 A. Yes.

10 Q. What are those letters next to the number 2?

11 A. My initials.

12 Q. And who was number 2?

13 A. K-9.

14 Q. Showing you 64.24, did you identify any of the
15 individuals in this photo array?

16 A. Yeah.

17 Q. Who did you identify?

18 A. 4.

19 Q. And who is that individual?

20 A. Yam.

21 Q. And what was Yam's real name?

22 A. Michael Walker.

23 Q. And, I'm sorry, do you know K-9's real name?

24 A. No.

25 Q. Mr. Humphrey, you are here today from a jail facility; is

1 that correct?

2 A. Yes.

3 Q. What jail are you in?

4 A. Erie County Holding Center.

5 Q. What are you currently -- are you currently charged with
6 anything?

7 A. Yes.

8 Q. What is that?

9 A. Criminal contempt and a probation violation.

10 Q. Are you in custody now due to the probation violation?

11 A. Yes.

12 Q. Do you have some prior convictions?

13 A. Yes.

14 Q. I'd like to talk about some of those.

15 In 2017, did you possess a firearm and were you caught by
16 the Buffalo Police Department?

17 A. Yes.

18 Q. What kind of -- when was that?

19 A. September.

20 Q. September of what year?

21 A. 2017.

22 Q. What happened -- well, where did you get that gun from?

23 A. I found it.

24 Q. And did you possess that gun?

25 A. Yes, I did.

1 Q. Did you keep it on you?

2 A. Yeah.

3 Q. Why did you keep a gun on you?

4 A. Because I had beef.

5 Q. Was it to protect yourself?

6 A. Yes.

7 Q. Did you plead guilty to possessing that gun?

8 A. Yes, I did.

9 Q. Was that in New York State court?

10 A. Yes.

11 Q. Did you receive a sentence for that?

12 A. Yes.

13 Q. What was that sentence you received?

14 A. A 6/5 split.

15 Q. Can you tell us what 6/5 split is?

16 A. Four months in jail, and five years probation.

17 Q. So four months in jail with good time?

18 A. Yeah. And five years probation.

19 Q. Did you get a -- do you also have a misdemeanor
20 conviction for possession of a controlled substance on June
21 the 4th of 2019?

22 A. Yes.

23 Q. Did you plead guilty to possessing that controlled
24 substance?

25 A. Yes, I did.

1 Q. What was that controlled substance?

2 A. Coke.

3 Q. And was that in your pants at the time you were actually
4 released from jail?

5 A. Yes.

6 Q. You said criminal contempt. Is it fair to say that you
7 have -- there's an order of protection against you?

8 A. Yes.

9 Q. Who is that in favor of?

10 A. My girlfriend.

11 Q. How long had you known this person?

12 A. Like, four years.

13 Q. Did you get arrested related to charges of breaking her
14 door?

15 A. Yes.

16 Q. And did you plead guilty to criminal mischief for those
17 charges?

18 A. Yes, I did.

19 Q. What sentence did you receive?

20 A. I got another 6/5 split.

21 Q. And are you on probation for both that and the gun case?

22 A. Yes.

23 Q. Did you also, after getting an order of protection, did
24 you continue to see her?

25 A. Yes.

1 Q. Was that in violation of the order of protection?

2 A. Yes.

3 Q. On June 19th, 2019, into the next night when you were
4 released from ECMC, who drove you home from the hospital?

5 A. My girlfriend.

6 Q. The one that had the order of protection?

7 A. Yes.

8 Q. Did you call her to come to the hospital?

9 A. No.

10 Q. Do you know how she got to the hospital?

11 A. I guess my mom called her.

12 Q. Did she agree to drive you home?

13 A. Yeah.

14 Q. Were you stopped and arrested by the Amherst Police
15 Department that night?

16 A. Yes.

17 Q. Was it legal for you to be with her?

18 A. No, it wasn't.

19 Q. Did that case result in -- well, what resulted in that
20 case?

21 A. It's still going on.

22 Q. It's still going on?

23 A. Yeah.

24 Q. I want to go back to just one thing to clear up.

25 Back in 2015 when you're having the conversation with the

1 defendant after Jaquan Sullivan is killed. And then, so,
2 following that, you mentioned that Larell Watkins had
3 indicated to Laron Watkins that a gun was hot?

4 A. Yeah.

5 Q. What did that mean to you that a gun was hot?

6 A. It's dirty.

7 Q. What does that mean?

8 A. Somebody got killed with it.

9 Q. Did the federal government get involved at all in any of
10 your state court prosecutions?

11 A. No.

12 Q. Did the federal government get involved in you receiving
13 any sentence that you've currently received?

14 A. No.

15 Q. Has the federal government made an agreement to you that
16 anything you say will not be used against you?

17 A. Yes.

18 Q. Has the federal government agreed that you will not be
19 prosecuted for anything?

20 A. Yes.

21 Q. We've agreed that you will not be prosecuted?

22 A. Oh, no. No, no, no. It's anything I use cannot be used
23 against me as long as I tell the truth.

24 Q. As long as you tell the truth. What does that mean to
25 you?

1 A. It's a proffer agreement.

2 Q. So you're under a proffer agreement?

3 A. Yes.

4 Q. What does a proffer agreement mean?

5 A. As long as I tell the truth, I cannot be prosecuted for
6 it.

7 Q. For what you say?

8 A. Yeah, for what I say.

9 Q. But is it your understanding that you can still be
10 prosecuted potentially for other crimes that you did, not
11 based on what you said?

12 A. Yes.

13 Q. Has the government agreed that you will not be
14 prosecuted?

15 A. No.

16 Q. Do you have an attorney on your state court case?

17 A. Yes.

18 Q. And is that the attorney that you used to enter into the
19 proffer agreement with the federal government?

20 A. Yes.

21 Q. Has the federal government agreed, however, once you
22 finish serving whatever sentence you receive in state court
23 agreed to relocate you?

24 A. Yes.

25 Q. And what's the purpose the government -- what's the

1 purpose that you want to be relocated?

2 A. For my protection.

3 Q. Why?

4 A. So I won't die.

5 MR. PARISI: Nothing further, Your Honor.

6 THE COURT: Mr. Spitler?

7 MR. SPITLER: Thank you, Judge.

8 **EXAMINATION BY MR. SPITLER (CROSS):**

9 Q. Mr. Humphrey, when you first arrived in the Towne
10 Gardens, you said it was sometime in what, 2014?

11 A. Yes.

12 Q. And then within a couple of months of your arrival, you
13 said you arrived in summer of 2014, it would be within a
14 couple months, you were selling marijuana in the Towne
15 Gardens Plaza, correct?

16 A. Yes.

17 Q. And you had become friends with other members who --
18 other people who reside in the Towne Gardens, correct?

19 A. Yes.

20 Q. And those individuals allowed you to sell drugs; is that
21 correct?

22 A. Yes.

23 Q. Is that what you're telling us? Yeah. Who? Who? Like,
24 who was the boss?

25 A. To my understanding, there's no boss.

1 Q. No boss. Who were the second -- if there's no boss,
2 who's second in command? Nobody, right?

3 A. Nobody.

4 Q. Oh. And you talked -- I think at one time you said hey,
5 you know, if somebody came to you to buy marijuana, you --
6 and you were out, you would say, well, go see one of the
7 other guys that sells in the Gardens, right?

8 A. It was nothing never about other drugs.

9 Q. How about marijuana? If somebody came to you to buy
10 marijuana, you were out, would you send them to another
11 marijuana seller in the Garden?

12 A. Yeah.

13 Q. Because you want to keep the money then, right?

14 A. Yeah.

15 Q. Okay. But there was no written agreement, nobody in
16 charge saying, hey, if you don't have any, you've got to send
17 it to this guy, not that the guy, right? There was nobody in
18 control?

19 A. Yeah, nobody in control.

20 Q. You were all independent contractors, weren't you? All
21 working your deals, right?

22 A. Yes.

23 Q. I think you told us you would have been 14 when you came
24 to the Towne Gardens, correct?

25 A. Yes, that's correct.

1 Q. Okay. And you said you had been a member of the group on
2 Schuele Street, a gang, correct?

3 A. Yes.

4 Q. It was a Schuele Street gang. So how old were you when
5 you joined that gang, 12, 13?

6 A. 13 maybe, yeah.

7 Q. 13? Okay. So you're with a group in Towne Gardens, and
8 you, you know, you're telling us that's BFL, and you told us
9 about the older guys. The BFL. You were never a member of
10 BFL you told us?

11 A. Never.

12 Q. But you said my client was, right?

13 A. Yes.

14 Q. Now the BFL guys, some of them had that tattoo right on
15 their stomach, didn't they?

16 A. Yes, they did.

17 Q. Who?

18 A. I can't remember right now.

19 Q. More than one of them?

20 A. Yes, more than one of them.

21 Q. My client didn't have that tattoo, did he?

22 A. No, he don't.

23 Q. No. And I think you told me my client didn't sell drugs
24 either?

25 A. He didn't, no.

1 Q. No. And did he live in Towne Garden?

2 A. No, he didn't.

3 Q. Okay. Now, you told us about in the summer of 2015, I
4 think that's when you were gambling with some guys at JFK
5 Park when somebody comes up and starts shooting at you guys,
6 right?

7 A. Yes.

8 Q. And although you said you couldn't see the face of the
9 individual that shot at you, you knew that individual was
10 Jaquan Sullivan?

11 A. Yes, I did.

12 Q. And as a result of that, you, along with some others,
13 went looking for Mr. Sullivan?

14 A. Yes.

15 Q. Yep. And your purpose in going to do that -- were you
16 armed --

17 A. Yes, I was.

18 Q. -- with a weapon?

19 And your purpose in going to do that was you were
20 intending to shoot Mr. Sullivan, didn't you?

21 A. Yeah.

22 Q. Right. And so your idea was I'm going to shoot Sullivan.
23 And you realized if you shot him, you could kill him, right?

24 A. Yeah.

25 Q. Right. But you didn't care if you shot and killed him,

1 that was okay with you, right? Because he had shot at you,
2 right?

3 A. Yes.

4 Q. Okay. Right. Now, you told the government that, didn't
5 you?

6 A. Yes, I did.

7 Q. And you're not being prosecuted for that, are you?

8 A. No.

9 Q. No. And that's attempted murder, isn't it?

10 A. No, it's not.

11 Q. Well -- it's not?

12 A. No.

13 Q. You mean, if you shoot at somebody and try to kill them,
14 and you miss them, it's not attempted murder?

15 A. Nobody was never hit.

16 Q. Right. Right. Oh, I'm sorry.

17 So the fact that you missed him, it really isn't a crime,
18 right? Right? That's your position?

19 MR. PARISI: Objection, Your Honor. Asking for a
20 legal conclusion.

21 THE COURT: Overruled.

22 BY MR. SPITLER:

23 Q. Right? You didn't do anything wrong because you missed
24 him, right?

25 A. I didn't say that.

1 Q. Oh, I'm sorry. But you told the government that, and the
2 government said don't worry, we're not going to prosecute you
3 for whatever you may have done that day, right?

4 A. Yeah, under a proffer agreement.

5 Q. Proffer agreement, that's right.

6 So basically what happens is, you, under the proffer
7 agreement, you got your attorney, he's helping you, right?

8 A. Yeah.

9 Q. You've got an attorney sitting right there when you're
10 talking to the government, right?

11 A. Yes.

12 Q. And what happens in the proffer is the government says
13 tell us what happened, we won't prosecute you, right?

14 A. Yes.

15 Q. I think you told us when being asked by Mr. Parisi about
16 who you saw selling drugs, and you listed Larell Watkins.
17 You told us that he sold marijuana, heroin and crack,
18 correct?

19 A. Yes.

20 Q. And you saw him every day doing this?

21 A. Yes.

22 Q. And you told us that Maurice Rice, he would sell crack
23 and heroin, and he would sell it every day, right?

24 A. Yes.

25 Q. And you told us that GB, that's Shameris Washington, he

1 sold heroin, and you'd see him doing that, right?

2 A. Yes.

3 Q. And Miquise Jones, he was selling heroin and -- heroin
4 and crack, and you saw him doing that on a daily basis as
5 well?

6 A. Yes.

7 Q. Okay. And Markel Green, who you called Dolo, he was BFL
8 but he was a weed seller, right?

9 A. Yes.

10 Q. Like you, in the plaza?

11 A. Yes.

12 Q. Right? Okay. And then Chris Henry, he was a -- was he
13 BFL, Chris Henry?

14 A. CBL.

15 Q. CBL, a little bit older. And he was selling crack. And
16 did you ever see him do that?

17 A. Yes.

18 Q. Okay. And I think you told us that 90, Lar'Quon Watkins,
19 he was a crack and heroin dealer, correct?

20 A. Yes.

21 Q. Not only did he sell to individuals, but he also supplied
22 other people?

23 A. Yes.

24 Q. And you'd see him do that as well?

25 A. Yes.

1 Q. And all these people that were engaged in this criminal
2 activity, they were okay with you being around watching them
3 engage in this criminal activity, right?

4 A. Yeah.

5 Q. Because you were trusted, right?

6 A. Yes.

7 Q. But you weren't a member of BFL?

8 A. No, I was not.

9 Q. How does somebody become a member of BFL? Is there like
10 an initiation? How does that work?

11 A. I don't know, you would have to ask the members of BFL.

12 Q. Well, you were around a lot of them. You mean, you never
13 saw anybody get into BFL?

14 A. No.

15 Q. So when you arrived in 2014, everybody that's in BFL is
16 in BFL; is that your testimony?

17 A. Yes.

18 Q. Okay. And from 2014 up until 2018, you never see anybody
19 else join BFL; is that correct?

20 A. '17.

21 Q. '17, you never see anybody else join BFL?

22 A. No.

23 Q. I remember you telling Mr. Parisi on direct examination
24 that you didn't ask questions, you would just kind of stand
25 there and take in what was being said, right?

1 A. Yeah, a listener.

2 Q. You were a listener, right.

3 You know, when you went out looking for Mr. Sullivan and
4 he started shooting at you, because he saw you coming, right?

5 A. He didn't see me.

6 Q. Jaquan didn't see you?

7 A. He didn't see me.

8 Q. No? Who did he see?

9 A. He seen Maurice and GB, he didn't see me.

10 Q. Because you weren't there?

11 A. I was there. He didn't see me, though.

12 Q. How -- how do you know that?

13 A. Just my guess.

14 Q. Your guess? Okay.

15 Now, on that particular occasion, because on one occasion
16 you had a gun and you shot at Sullivan, correct? On this
17 occasion, did you have a gun?

18 A. It's the same occasion.

19 Q. Same occasion. Okay. So he didn't see you. But he
20 didn't shoot it at the group you were in?

21 A. He shot at the car.

22 Q. Yeah. Who shot first?

23 A. Sullivan.

24 Q. Sullivan? Now you were asked about the December 5th,
25 2015 shooting and Mr. Sullivan's death, and you said you

1 learned about that on a Facebook post.

2 A. The death, yes.

3 Q. His death, yes, okay.

4 You then said maybe about a week later, you were around
5 in of the buildings at the Towne Garden --

6 A. Two weeks.

7 Q. -- huh?

8 A. Two weeks.

9 Q. Two weeks? Two weeks.

10 -- and you were in a building in the Towne Garden, and
11 you said that my client admits to you and some others that he
12 shot Mr. Sullivan, right?

13 A. Yes.

14 Q. And he tells this story that Sullivan came up, made some
15 threatening comments, and starting shooting at him, right?

16 A. I didn't say he started shooting.

17 Q. You didn't?

18 A. No, I said he shot one time.

19 Q. Oh, he shot one time?

20 A. Yeah.

21 Q. And then I think you told us that my client told you that
22 he shot him, and shot him in the chest five times, right?

23 A. Yes.

24 Q. You remember that number, right?

25 A. Yeah, it's significant.

1 Q. Okay. Did you ever find out how many times Mr. Sullivan
2 was shot in the chest, sir?

3 A. No.

4 Q. Okay. Maybe we'll find that out later.

5 MR. PARISI: Objection.

6 THE COURT: Overruled.

7 BY MR. SPITLER:

8 Q. Who's Flock?

9 A. I don't know him.

10 Q. Who's Lil D?

11 A. Dalvon friend.

12 Q. But you don't -- although you've heard that name, that
13 name -- you don't connect either one of those names with a
14 person, correct?

15 A. I knew Lil D.

16 Q. What's Lil D's name, do you know?

17 A. No, I don't.

18 Q. Okay. Now, you indicate that you saw my client with a
19 gun after the Sullivan shooting. You said you saw it on his
20 hip, correct?

21 A. Before, not after.

22 Q. Before. And then -- and then after, you saw that gun one
23 more time; is that correct?

24 A. Yes.

25 Q. And you believed it to be the same gun?

1 A. I knew it was the same gun because I seen it before.

2 Q. So are you saying that gun was so unique it was the only
3 gun that could have looked like that?

4 A. And from other comments that was around when I seen the
5 gun again.

6 Q. Well, you saw it with -- I think you told us Laron?

7 A. Yes.

8 Q. Did you see -- is it your testimony that my client gave
9 that gun to Laron?

10 A. I don't know how Laron got the gun.

11 Q. And obviously you don't know when he got it. You don't
12 know how he got it and you don't know when he got it?

13 A. No.

14 Q. Now on another occasion you're walking to -- I think to
15 the liquor store on Jefferson, right --

16 A. Yes.

17 Q. -- with a bunch of others, and somebody drives by and
18 shoots at you, right?

19 A. Yes.

20 Q. You don't know who that is? Or do you?

21 A. No, I don't.

22 Q. Car didn't look familiar to you?

23 A. No.

24 Q. Let's move on to New Year's Eve.

25 MR. SPITLER: And we need to bring up -- so can we

1 bring up 46.16, page 7, please?

2 BY MR. SPITLER:

3 Q. Okay. Now this is in evidence, you've already testified
4 about to this.

5 You told us on direct examination that your cousin was
6 not -- he was just a -- let me see here. He wasn't a drug
7 dealer, he wasn't a gun guy, he didn't -- wasn't a violent
8 guy at all, right?

9 A. Absolutely.

10 Q. Okay. If you go down that post, you'll see that on
11 Saturday at 1:39, that's your cousin saying to my client, you
12 can't come to the town, right?

13 A. Yes.

14 Q. So your client -- why is your client telling my client
15 that?

16 MR. PARISI: Objection, speculation.

17 THE COURT: Sustained.

18 MR. SPITLER: Okay.

19 THE COURT: And to the form of the question, as well.

20 MR. SPITLER: Okay.

21 THE CLERK: Try again, Mr. Spitler.

22 BY MR. SPITLER:

23 Q. But you see what he says.

24 A. Yeah, I see what he says.

25 Q. Okay. And how do you interpret that?

1 A. I don't know. I blow it off.

2 Q. Okay. And you see my client's response, I'm a grown-ass
3 man, right?

4 A. Yeah.

5 Q. And then your client -- and then your cousin -- by the
6 way, I know you said he's your blood cousin. So is he a
7 first cousin of yours? Were your parents brothers and
8 sisters?

9 A. Second.

10 Q. Okay. Second something, okay.

11 It says you shook to touch down, and it's got some emojis
12 there. I think those are crying faces, aren't they?

13 A. Laughing.

14 Q. Huh?

15 A. Laughing.

16 Q. Is it laughing? Laughing. Okay.

17 Your interpretation of you shook to touch down?

18 A. Scared to come back.

19 Q. So, why is your cousin engaged in this conversation?

20 MR. PARISI: Objection, speculation.

21 THE COURT: No, overruled.

22 BY MR. SPITLER:

23 Q. Do you know?

24 A. No, I don't.

25 Q. Okay. And then response by Mr. Curry, if you actually

1 think that, you could suck one, and whoever think that too.
2 And then there's an emoji with what appears to be sunglasses
3 on. What's the significance, as you understand it, an emoji
4 with sunglasses, do you know?

5 A. Cool.

6 Q. Okay. And now your cousin says stop talking like you
7 tough, with a couple exclamation points. I'll make you pick
8 yo gun back up lil boy, exclamation point. You soft as hell,
9 exclamation point.

10 Did you know why your cousin -- did you ever talk to your
11 cousin? Do you know why he's saying these things?

12 A. No, I don't.

13 MR. SPITLER: Okay. Could we go to 46.93, please.

14 BY MR. SPITLER:

15 Q. This is the hallway you've testified about before. The
16 stairway that we're looking at, there appears to be a
17 stairway on the other side of the building; is that correct?

18 A. Yes.

19 Q. The stairway that we're looking at, would this have come
20 in -- would this -- this is the stairway where you were
21 looking out the window, correct?

22 A. Yes.

23 Q. And would that be the considered the front of the
24 building or the back of the building?

25 A. I don't know would it be -- what it would be considered.

1 Q. Okay. But in any event, you indicated on your direct
2 examination that this photograph shows your viewing point as
3 you look up that stairway to that landing, and remember you
4 marked where you saw your cousin hit him with the bottle,
5 right?

6 A. Yes.

7 Q. Now, as he approached -- as your cousin approached my
8 client, did he say something to my client? Like, I'm gonna
9 hit you? Or you're a punk? Or you're soft as hell? Did he
10 say anything, or did he just hit him?

11 A. That I remember, he just hit him.

12 Q. Just hit him. Commonly referred to as a sucker hit, a
13 sucker punch, right? You don't see it coming. That's what
14 happened to you, right, in that video? You get sucker
15 punched, didn't you?

16 You're talking to the one guy and the other dude comes up
17 and sucker punches you, doesn't he?

18 A. Absolutely.

19 Q. Huh? Absolutely. So they're both sucker punches, right?

20 A. I guess, if you want to say that.

21 Q. I do. You don't -- you disagree? Is that your -- you
22 have to give me an answer. Do you disagree, or not?

23 A. No, I don't disagree.

24 Q. Okay. Thanks. So we know you're looking out --

25 MR. SPITLER: Can we go to 46.127, I'm sorry, 125.

1 Pardon me.

2 BY MR. SPITLER:

3 Q. All right. Now, this is the window that you were looking
4 out. And just so I'm clear, the only windows that open are
5 these rectangular ones, the four rectangular ones, correct?
6 The lower one and the upper one, that's a permanent -- that's
7 permanent, correct?

8 A. Yes.

9 Q. As we're looking at these four windows from right to
10 left, you were looking out the window farthest to the right,
11 weren't you?

12 A. Yes.

13 Q. Could you mark the one you were looking out? Right here?
14 Okay. And how far out the window were you leaning when you
15 were looking?

16 A. From of my chest, up.

17 Q. Chest, up. Okay.

18 And now if we go to -- so, when you talked about the
19 sidewalk on direct examination, this is the sidewalk that we
20 see partially obscured by the frame of the window, correct?

21 Not the -- not the sidewalk that's headed off towards the
22 other building that Ts in some of the sidewalks, correct?

23 A. It's the one that's going to the right.

24 Q. Yeah. Could you just draw your finger down the sidewalk
25 that you -- right. Okay.

1 MR. SPITLER: So now can we go to 46.127.

2 BY MR. SPITLER:

3 Q. All right. So now you'd agree with me --

4 MR. SPITLER: Can we clear those marks, please?

5 Thank you.

6 BY MR. SPITLER:

7 Q. So you're leaning out, and you talked about that dark
8 spot where there was a tree. And your testimony is, is that
9 you could see the Jeep, the burgundy-colored Jeep leaning out
10 that window despite the presence of that tree; that's your
11 testimony, isn't it?

12 A. Yes, it was a small tree.

13 Q. I see. Okay. And I don't see any streetlights around
14 that white car. This was after midnight on January 1st of
15 2017. It was dark, wasn't it?

16 A. Yes, it was.

17 Q. Your testimony is you could see something past? That's
18 your testimony? You could see something past?

19 A. Yeah, I could see.

20 Q. Which side of the car were they on?

21 A. On the right side.

22 Q. Driver's side or passenger's side?

23 A. Driver's side.

24 Q. Driver's side. Okay. And you saw your cousin walking
25 down that sidewalk towards that car?

1 A. I never said he was walking down the sidewalk.

2 Q. Well, he's walking on the grass?

3 A. Yes.

4 Q. Oh, okay. And you said he was limping?

5 A. Yeah, he was limping.

6 Q. Um-hum. And from your vantage point, well, e you said

7 that you saw -- that you saw my client and Mr. Watkins,

8 Larell Watkins, at the burgundy Jeep, right?

9 A. Yes.

10 Q. So they were already at the Jeep as your cousin limped

11 down the grass towards the Jeep?

12 A. Yes.

13 Q. So they got out of the building before your cousin got

14 out of the building?

15 A. Yes.

16 Q. Prior your testimony, have you had an opportunity to

17 review your prior statements to the police as well as the

18 grand jury? Did you look at what you had said under oath

19 previously?

20 A. No.

21 Q. Do you recall, you talked about the statements you gave

22 on January 31st, 2017, correct?

23 A. Yes.

24 Q. And in that statement, you were not truthful, correct?

25 A. Correct.

1 Q. You know, in that statement do you remember you were
2 asked if you had spoken with either my client or Larell since
3 Xavier was killed, and you said no; do you recall that?

4 A. Yes.

5 Q. And that wasn't true, was it, because you told us that
6 you did, stood around while you claim my client admitted to
7 the shooting, right?

8 A. I never say he admitted to no shooting of Xavier.

9 Q. Okay. But you never talked to him either?

10 A. No.

11 Q. Okay. You were -- you had indicated that it was, to the
12 best of your recollection, ten to 15 minutes that my client
13 and Mr. Larell Watkins were at the Jeep; that was -- that was
14 your best guess, correct?

15 A. Yes.

16 Q. Okay. And where was your cousin during that time?

17 A. In Ms. Felicia house.

18 Q. Okay. And you said that Steve was trying to help you, or
19 at least initially helped your cousin, correct?

20 A. Correct.

21 Q. Okay. That's Steve Major, right?

22 A. Yes, that's correct.

23 Q. After your cousin ended up in her apartment, where did
24 Mr. Major go?

25 A. I don't recall where he went.

1 Q. Did he come and stand next to you at the window?

2 A. No, he didn't.

3 Q. You're aware that a number of people from the Towne
4 Gardens were initially charged in this case, correct?

5 A. Yes.

6 Q. 14 of them, right?

7 A. I don't remember.

8 Q. But you know, for instance, Michael Walker was charged,
9 right?

10 A. In this case?

11 Q. Yeah.

12 A. No, I wasn't sure of that.

13 Q. Okay. How about Maurice Rice?

14 A. He wasn't there, neither, so how would he be charged?

15 Q. No, no, no, I mean in this particular case. People in
16 this conspiracy. You're aware that certain members of the
17 BFL were charged in this case, correct?

18 A. Yes.

19 Q. Did you know one of them was Mr. Rice?

20 A. Yes.

21 Q. Did you know one of them was Larell Watkins?

22 A. Yes.

23 Q. Okay. And those individuals were the people that you
24 told us were people that you associated with on a Dal basis
25 in your time living in Towne Garden, correct?

1 A. Correct.

2 Q. And you indicated that you didn't see my client around
3 Towne Garden a lot, did you?

4 A. I never said that.

5 Q. You never -- oh, well, did you see him around a lot?

6 A. Yes, I did.

7 Q. Okay. And in 2015 into 2016, where was he living in the
8 Towne Garden?

9 A. He wasn't living in the Towne Gardens.

10 Q. Okay.

11 A. To my understanding, he wasn't even in Buffalo.

12 Q. Okay. So he wasn't physically, to the best of your
13 knowledge, he wasn't physically around Towne Garden.

14 A. Absolutely.

15 MR. SPITLER: Just a second. A moment, please,
16 Judge.

17 THE COURT: Mr. Spitler, would this be a good time to
18 take a break?

19 MR. SPITLER: I've got a few more questions.

20 THE COURT: Go ahead.

21 MR. SPITLER: 46.126, please. Can we try 27 now? I
22 want the view towards the white vehicle. Yes, thank you.

23 BY MR. SPITLER:

24 Q. Okay. So here's the area again, looking at 46.127. And
25 we see the white car was where the Jeep was. So you said

1 after -- after the shots were fired, you saw my client run,
2 correct?

3 A. Correct.

4 Q. Now, you're familiar with this area, so you know as we
5 look behind these vehicles, that's the plaza, isn't it?

6 A. Yes.

7 Q. And that's north -- that's in a north direction, correct?
8 Northerly? If you know.

9 A. Yeah.

10 Q. And you indicate that my client ran to the left in this
11 picture, and that would be towards --

12 A. Hickory Street.

13 Q. -- Hickory, right?

14 MR. SPITLER: Thanks. That's all I've got. You can
15 take that down, thank you.

16 THE COURT: Redirect?

17 MR. PARISI: Yes, Your Honor.

18 THE COURT: How long do you think you'll have?

19 MR. PARISI: Five minutes.

20 THE COURT: Okay.

21 **EXAMINATION BY MR. PARISI (REDIRECT):**

22 Q. Mr. Humphrey, just a few things I'd like to clear up.
23 Mr. Spitler asked you if you've reviewed prior statements.
24 You have reviewed your grand jury testimony, correct?

25 A. Yeah, the grand jury testimony.

1 Q. Were you just confused when he asked you about reviewing
2 prior statements?

3 A. Yes.

4 Q. Okay. But you have reviewed your grand jury statements
5 and your statements to the police, right?

6 A. Yes.

7 Q. A few things I'd just like to clarify. You said that --
8 Mr. Spitler asked you about times that you saw Dalvon Curry
9 in the Towne Gardens versus times you believed him to be out
10 of town. And I think on direct examination -- well, let me
11 just ask you.

12 After -- prior to the Jaquan Sullivan shooting, was
13 Dalvon Curry a person that you saw in the Towne Gardens just
14 about every day?

15 A. Prior to it? Yes.

16 Q. Following that shooting, did there come a time when you
17 did not see Dalvon Curry as much?

18 A. Yes.

19 Q. Is that the time you believed him to be out of Buffalo?

20 A. Yes.

21 Q. The statements that you heard with respect -- that Dalvon
22 Curry made to you with respect to shooting Jaquan Sullivan,
23 when did those occur in relation to when Jaquan Sullivan was
24 killed?

25 A. A week or two later.

1 Q. While he was still in Buffalo?

2 A. Yes, while he was still in Buffalo.

3 Q. Well before Xavier Wimes was killed?

4 A. Yes.

5 Q. Is it more beneficial for you to tell the truth or to
6 lie?

7 A. To tell the truth.

8 Q. Why is that?

9 A. So I won't be prosecuted for the stuff I told y'all.

10 Q. Because then anything you said can be used against you?

11 A. Yes.

12 Q. If someone other than Dalvon Curry fired the gun at
13 Xavier Wimes, would you tell us?

14 A. Yes.

15 MR. PARISI: Nothing further, Your Honor.

16 MR. SPITLER: I just have to ask.

17 THE COURT: No, no, that's okay. Go ahead.

18 **EXAMINATION BY MR. SPITLER (RECROSS) :**

19 Q. Not only did you review your grand jury testimony and
20 your statement to the police on January 31st of 2017, but you
21 also reviewed your proffer agreement, didn't you? That
22 proffer agreement that you read over?

23 A. No, I don't remember seeing that.

24 Q. Do you remember, it says -- do you remember in the second
25 paragraph it says, however, this is your proffer --

1 MR. PARISI: Objection, Your Honor. Improper
2 impeachment. Reading from a document not in evidence.

3 MR. SPITLER: Okay. I'll -- can we bring up just for
4 the witness, please, 3566.05.

5 BY MR. SPITLER:

6 Q. Please take a look at that document. Can we go to the
7 second page. Let me know when you're finished looking at the
8 second page?

9 And the third page now, please. Is that your signature
10 on that page, sir?

11 A. Yes, it is.

12 Q. Dated June 7th of 2018?

13 A. Yes.

14 MR. SPITLER: Can we go back to the first page,
15 please?

16 BY MR. SPITLER:

17 Q. Do you see in the paragraph 2, did you read that -- can
18 you read that paragraph again to yourself?

19 You read it over, right?

20 A. Yes.

21 Q. Yes? And that paragraph indicates that the government
22 has the sole discretion to determine whether or not you're
23 telling the truth, doesn't it, right?

24 A. Yeah.

25 Q. So it's not when you -- when the government says they

1 think you're telling the truth, right, then we'll give you
2 the benefit of the doubt?

3 MR. PARISI: Objection, Your Honor. Calls for
4 speculation as to what other individuals believe.

5 THE COURT: I'll sustain the objection to the form of
6 the question, but not -- not the objection he made,
7 Mr. Spitler. You can ask that question.

8 BY MR. SPITLER:

9 Q. So, it's up to the government to decide if you're telling
10 the truth, isn't it?

11 A. That's not to my knowledge. I was asked what --

12 Q. Do you disagree with me that it says that the government
13 has the sole discretion in evaluating the information and
14 tangible objects that you've given to them?

15 A. It says that.

16 Q. Right. So it's the government that decides whether or
17 not you're telling the truth, right?

18 A. Yeah, I guess.

19 MR. SPITLER: All right. Thanks.

20 You can take it down. Thank you.

21 THE COURT: Anything else?

22 MR. PARISI: May have I just have one moment, Your
23 Honor, please? Nothing further, Your Honor.

24 THE COURT: Okay. You can step down.

25 (Witness excused at 3:04 p.m.)

1 THE CLERK: Folks, we're going to take our afternoon
2 break now. Please remember my instructions about not
3 communicating about the case, not using tools of technology in
4 any way, and not making up your mind.

5 See you back here in 10 or 15 minutes. Thanks.

6 (Jury excused at 3:05 p.m.)

7 THE COURT: Okay. Anything we want to put on the
8 record before we break?

9 MR. PARISI: No, thank you, Your Honor.

10 MR. SPITLER: No, thank you, Judge.

11 THE COURT: Okay. See you back here in 10 or 15
12 minutes.

13 (Off the record at 3:05 p.m.)

14 (Back on the record at 3:19 p.m.)

15 (Jury not present.)

16 THE COURT: Be seated.

17 THE CLERK: We are back on the record for the
18 continuation of the jury trial in 17-cr-103, United States of
19 America versus Dalvon Curry.

20 All counsel and parties are present.

21 THE COURT: Before we resume, there's an issue that I
22 want to raise, and that is that during the last witness's
23 testimony on direct, Mr. Parisi, you elicited the fact that
24 the witness was given the benefit of relocation. And that
25 sort of testimony is generally frowned upon because it

1 suggests that there's a reason to relocate the witness.

2 Mr. Spitler didn't object, I assume, because you
3 wanted all the benefits that the witness was getting to come
4 out.

5 MR. SPITLER: Yes.

6 THE COURT: And I don't like to interfere in these
7 sorts of things. But let me just suggest that if that sort of
8 testimony is going to come out again, that you bring it to our
9 attention before it comes out so that we can address it.

10 And, Mr. Spitler, if you have a problem with it,
11 obviously, you will object to it. I know you will. If you
12 don't, that's fine, too. But if you -- there are cautionary
13 instructions that the Court can give on that sort of thing,
14 and we can do that.

15 I'm not going to -- I mean, look it, you are a very
16 experienced trial lawyer, Mr. Spitler, and when I tried cases
17 and judges raised objections for me, I used to go through the
18 roof because I said, you know, damn it, you're screwing up my
19 strategy, and I don't want to, in any way, tamper with your
20 strategy, so I'm not going to raise objections for you.

21 MR. SPITLER: Thank you, Judge.

22 THE COURT: But that means that you've got to be
23 attuned to these issues and raise them.

24 MR. SPITLER: Yes, Judge.

25 THE COURT: And if -- well, enough said.

1 MR. SPITLER: Judge, Mr. Parisi had indicated that
2 that was going to be brought up.

3 THE COURT: You knew it already?

4 MR. SPITLER: I knew it already. Mr. Parisi provided
5 me with the benefits that had been provided to him, and so I
6 was aware of it. Thank you, Judge.

7 THE COURT: Okay. That's fine. As long as you folks
8 are, as I say, I don't want to interfere with either side's
9 strategy, so I'm not going to. But let's bring that up with
10 me next time, just so I'm not surprised by it.

11 MR. PARISI: Yes, Your Honor.

12 THE COURT: Okay? Great.

13 Okay. Anything we want to put on the record before
14 we start?

15 MR. PARISI: No, thank you, Your Honor.

16 MR. SPITLER: No, thank you, Judge.

17 THE COURT: Let's bring them back.

18 (Jury seated at 3:24 p.m.)

19 THE COURT: Welcome back, everybody. The record will
20 reflect that all our jurors again are present.

21 And you may call your next witness.

22 MR. TAYLOR: Thank you, Your Honor. The government's
23 next witness will be Michael Maritato from the Buffalo Police
24 Department.

25

1 **M I C H A E L M A R I T A T O**, having been duly called and
2 sworn, testified as follows:

3 MR. TAYLOR: May I, Your Honor?

4 THE COURT: You may.

5 **EXAMINATION BY MR. TAYLOR (DIRECT) :**

6 Q. Good afternoon, sir. How are you?

7 A. I'm good, thank you.

8 Q. Sir, where do you work?

9 A. I work for the Buffalo Police Department in B District.

10 Q. And how long have you worked there?

11 A. In B District, I've been there about three years. For
12 the department, I just completed my sixth year.

13 Q. Your sixth year?

14 A. Yes.

15 Q. And the jury's already heard this a couple times, but
16 just describe briefly where is B District?

17 A. The stationhouse is 695 Main Street, downtown. It
18 stretches to the east, Jefferson, the river to the west,
19 Ferry to the north, and I believe South Park to the south.
20 Incorporates a lot of neighborhoods.

21 Q. And one of those neighborhoods is the Towne Gardens?

22 A. That's correct.

23 Q. Can you tell me what -- what are car detail reports or
24 chief's detail reports?

25 A. They're essentially -- as a chief's car, you're assigned,

1 it's like a quality of life type of car. Whatever the chief
2 calls for concern, you patrol entertainment districts, you
3 could patrol high-crime neighborhoods, high-priority calls,
4 that type of stuff.

5 Q. And did you -- were you on that shift for, say, back in
6 2017?

7 A. I was.

8 Q. If I could turn your attention specifically to May 13th
9 of 2017, what was your shift that day?

10 A. I worked 8 p.m. until 6 a.m. That was NP5, what we call
11 it in the department.

12 Q. What does that mean?

13 A. It's just a night shift, pretty much.

14 Q. Okay.

15 A. But I was assigned to the chief's car that night.

16 Q. And at some point, did you participate in a -- or, get a
17 chief's call? Or was there a specific call that brought your
18 attention?

19 A. I believe there was a shots-fired call at 515 Clinton.
20 We assisted on that, which is right across from the Towne
21 Gardens.

22 Q. 515 Clinton is right across from the Towne Gardens?

23 A. Correct.

24 Q. So what happened on that call? Did you respond?

25 A. We did. There was no evidence of shots fired, no shell

1 casings, things of that nature. But there were -- there was
2 a car in the area that we did check out because it was very
3 close to the scene. It was a sedan occupied by, I believe,
4 at least five males.

5 Would you like me to name them?

6 Q. If you know their names.

7 A. Sure. It was Lar'Quon Watkins, Larell Watkins, Miquise
8 Jones, Steve Major, and Shameris Washington.

9 Q. So what -- you said the car was close to the -- where the
10 shots-fired call had originated from?

11 A. It was in the parking lot of where the shots-fired call
12 came out.

13 Q. So what did you do in relation to this car?

14 A. Being that it was in the area, I figured it could be tied
15 into the potential shots call, so what we did was, you know,
16 take the -- each individual out of the car, make sure there
17 was no weapons, you know, pat them down for weapons, run
18 their names, make sure there's no warrants, that type of
19 thing. Document your, you know, document each person's name
20 just in case, you know, we wake up the next day and
21 they're -- someone finds shell casings or something of that
22 nature.

23 But once they had no warrants, they checked out okay, we
24 just documented who was there and cut 'em loose.

25 Q. What's the tone of the interaction between the police and

1 these gentlemen?

2 A. They were cordial with us. You know, we kind of
3 explained the situation, that we were there for shots fired
4 and just wanted to make sure they weren't involved at all.

5 Q. Did you make any arrests that night?

6 A. No arrests, no.

7 Q. Okay. I'm going to move you forward to May 29th of the
8 same year, 2017. Was there a call that day?

9 A. Yes. Same spot. 515 Clinton. There was a narcotics
10 call, I believe, for black males dealing drugs underneath the
11 gazebo. We were close to the area. I was responding.

12 I recall a gentleman walking across the street from
13 515 Clinton to the Towne Gardens. Like I said, it's just
14 right across the street.

15 We stopped the individual. We kind of explained to him
16 why we were doing it. It was Steve Major. Same thing, we
17 patted him down, made sure he didn't have weapons.

18 And we, you know, just ran him for a warrant, very
19 similar to what happened before, and cut him loose.

20 Q. Any other individuals on that particular day?

21 A. There was two other individuals, I don't recall one of
22 them. The other one was Lar'Quon Watkins.

23 Q. Did you stop Mr. Watkins?

24 A. We did not. When they saw the police car approaching,
25 they kind of all split their own ways, so we were only able

1 to catch up with Steve that day.

2 Q. So you -- so fair to say -- so you -- you caught up with
3 Steve Major, and you actually stopped and had an interaction
4 with him, and you recognized Lar'Quon Watkins but didn't
5 actually speak with him?

6 A. That's correct.

7 Q. And the third male, you didn't recognize?

8 A. Third male, no, he was too far gone by the time we
9 reached him.

10 Q. And, again, what was the tone of this, of the interaction
11 on the 29th?

12 A. Oh, same thing, cordial. He didn't give us too much of a
13 problem. We explained why we were there, what we were doing.
14 He was fine with it, cooperative.

15 Then same thing, he cut him loose. He didn't have any
16 warrants. We had no need to talk to him any further, and we
17 went about our way. So, that was about it.

18 Q. No arrests that day?

19 A. No arrests were made, no.

20 MR. TAYLOR: That's all I have. Thank you, sir.

21 THE COURT: Anything, Mr. Spitler?

22 MR. SPITLER: No questions.

23 THE COURT: Okay. You're released, sir.

24 (Witness excused at 3:31 p.m.)

25 THE COURT: Next witness, please.

1 MR. PARISI: The government calls Officer Stephen
2 Mikac.

3

4 **S T E P H E N M I K A C**, having been duly called and sworn,
5 testified as follows:

6 **EXAMINATION BY MR. PARISI (DIRECT) :**

7 Q. Good afternoon, Officer.

8 A. Good afternoon.

9 Q. Where do you work?

10 A. I work for the City of Buffalo Police Department.

11 Q. How long have you worked for the Buffalo Police
12 Department?

13 A. 13 years.

14 Q. Have you worked in various districts?

15 A. I have.

16 Q. What district have you worked in?

17 A. I've worked in the Edward District, the Bravo District,
18 and now I'm assigned to the K-9 Unit.

19 Q. Back in 2016, where were you working?

20 A. Bravo District.

21 Q. How long had you worked in the Bravo District throughout
22 your career?

23 A. Approximately ten years.

24 Q. So most of your career?

25 A. Yes.

1 Q. Are you familiar with an area of Bravo District called
2 the Towne Gardens?

3 A. I am.

4 Q. And how are you familiar with that?

5 A. It is at the corner of Jefferson and Clinton. We have
6 various calls there.

7 Q. And have you responded to that area over the course of
8 your ten years in the Bravo District?

9 A. I have.

10 Q. And have you made various reports of certain interactions
11 that you had with individuals throughout your career there?

12 A. I have.

13 Q. I'd like to talk to you about just one of those in
14 particular. On November 15th, 2016, were you working on that
15 day?

16 A. I was.

17 Q. Do you recall your shift?

18 A. The afternoon shift.

19 Q. Which is from when to when?

20 A. 3:30 p.m. to 1:30 a.m.

21 Q. And were you on a specialized unit that day?

22 A. I was a detail car.

23 Q. Explain to us what that means.

24 A. That means I drive around our district, I initiate
25 traffic stops, I do foot patrols. Particularly, I did foot

1 patrols in the Towne Gardens.

2 Q. If you are on a detail call, are you also responding to
3 911 calls, or is this --

4 A. Only high-priority calls we respond to.

5 Q. So it's kind of separate and apart from normal patrol
6 duties?

7 A. Correct.

8 Q. And as part of the detail car, did you have the
9 opportunity to walk through the Towne Gardens for patrol on
10 November 15th, 2016?

11 A. I did.

12 Q. Did you go to any buildings in particular?

13 A. Yes, I did.

14 Q. Do you recall what building it was that day?

15 A. 22 Curry Walk.

16 Q. And when you went to 22 Curry Walk, why did you go to
17 that building?

18 A. Because when we were doing the foot patrol, we noticed
19 that there were some guys up in the hallway hanging out.

20 Q. Hanging out where?

21 A. In the common area on the landing of the stairwell.

22 Q. And is that something that you, as a Buffalo police
23 officer, detailed to investigate persons for reasons of being
24 there?

25 A. It is.

1 Q. Did you enter -- well, were you working alone or with a
2 partner that day?

3 A. I had a partner.

4 Q. Are you in uniform or plain clothes?

5 A. Uniform.

6 Q. Are you on foot or in a vehicle when you're within the
7 Towne Gardens?

8 A. On foot.

9 Q. Did you enter 22 Curry Walk that day?

10 A. We did.

11 Q. When you say "we," who is we?

12 A. My partner, Chad Maloney.

13 Q. How did you enter 22 Curry Walk?

14 A. We went through a broken door. The door handles are
15 broken, so we were able to gain access that way.

16 Q. Did you both go through the same entrance?

17 A. We did go through the same entrance.

18 Q. And what happened when you went inside of 22 Curry Walk?

19 A. My partner would -- there's a stairway where you can go
20 to the front, and then a stairway that goes up the back. I
21 went up the back, and my partner went up the front.

22 Q. What's the purpose in the two of you going up separate
23 stairwells?

24 A. Because when we used to enter these buildings, we would
25 both go up to the front to talk to the individuals we would

1 see in the hallway, and they would go running out the back.

2 So I would go up the back to cut them off if they tried to
3 run.

4 Q. Did you come into contact with any individuals as you and
5 Officer Maloney went up the stairwells?

6 A. We did.

7 Q. How many individuals?

8 A. Five.

9 Q. And what was your purpose in interacting with these
10 individuals that day?

11 A. To see what their purpose was in the building, to see if
12 anybody lived in there, and to see if any criminal activity
13 was taking place.

14 Q. And did you make an identification of these individuals?

15 A. I did.

16 Q. How do you make a identification of these individuals?

17 A. I ask them for their identification.

18 Q. When you get their identification, do you confirm that
19 that is the person you're actually speaking to?

20 A. I do.

21 Q. Do you recall the names of any of the individuals that
22 you spoke with that day?

23 A. I do.

24 Q. What were the names?

25 A. Steve Major, Larell Watkins, Hakeem Humphrey, and then I

1 can't remember the other two, off the top of my head.

2 Q. Is there a report that you created following this event?

3 A. Yes, in a detail car report, where I have written their
4 names down.

5 Q. Would reviewing that report assist you and refresh your
6 recollection in the names of the individuals?

7 A. It would.

8 Q. Officer, I'm going to hand you what's marked for
9 identification as Government Exhibit 3591.07. Is that the
10 actual detail car report from that night?

11 A. It is.

12 Q. And can you please review that document -- well, first of
13 all, would that document refresh your recollection?

14 A. It does.

15 Q. Can you please review that document, then look up when
16 your recollection is refreshed?

17 Do you recall the names of the five individuals?

18 A. I do.

19 Q. What were they?

20 A. Mikel Lowe, and Darren Lewis.

21 Q. So the two that you -- I'm sorry, just if you can give us
22 all five again so we've got the whole list now.

23 A. Oh, okay. Mikel Lowe, Darren Lewis, Steve Major, Larell
24 Watkins, and Hakeem Humphrey.

25 Q. Now with respect to these individuals, did you make any

1 arrests?

2 A. No.

3 Q. What did you do with these individuals?

4 A. We got their identification, made sure nobody had any
5 warrants, and we had them go leave the building.

6 MR. PARISI: Nothing further for this witness, Your
7 Honor.

8 MR. SPITLER: No questions, Judge. Thank you.

9 THE COURT: You may step down, sir. Thank you.

10 THE WITNESS: Thank you.

11 (Witness excused at 3:38 p.m.)

12 THE COURT: Next witness, please.

13 MR. TAYLOR: Lieutenant Scott Culver, Your Honor.

14

15 **S C O T T C U L V E R**, having been duly called and sworn,
16 testified as follows:

17 MR. TAYLOR: May I, Your Honor?

18 THE COURT: Yes.

19 **EXAMINATION BY MR. TAYLOR (DIRECT) :**

20 Q. Good afternoon, Lieutenant. How are you?

21 A. Good, how are you?

22 Q. I'm good, thank you. How long have you been a Boston
23 police officer -- or, Boston, geez -- Buffalo?

24 A. Buffalo, just over eight years.

25 Q. Eight years. And where have you worked during that time?

1 A. I've been in patrol for most of my career. Different
2 districts. I worked in South Buffalo, I've worked in the
3 Strike Force Task Force, I've worked in Charlie District as a
4 lieutenant and down at central booking as a lieutenant. And
5 I'm currently a lieutenant in Delta District, which is North
6 Buffalo.

7 Q. Okay. Back in 2014 in the summer, where were you then?

8 A. I was in Strike Force.

9 Q. What is Strike Force?

10 A. Strike Force was a proactive policing unit that focused
11 on our problem areas in the city, maybe if there was certain
12 gang activity or narcotics activity. We also did a lot of
13 traffic enforcement. Stuff like that.

14 Q. Where were some of those problem districts or problem
15 areas?

16 A. At that time, Towne Gardens was one of our main areas.
17 Also, certain hot spots where shootings and stuff were
18 happening, I can't recall exactly where then.

19 Q. Specifically, if I turned your attention to Independence
20 Day, July 4 of 2014, did your tour of duty that day take you
21 to the area of the Towne Gardens?

22 A. Yes, it did.

23 Q. And what brought you there?

24 A. We had an overtime detail in the morning at the time that
25 was like, I believe, four hours. And because the Towne

1 Gardens having the attention that the department wanted on
2 it, that was one of our focal areas. So when we first got
3 in, we went over to this plaza that's right next to it, that
4 was lot of different reports and 311 complaints as far as
5 people selling drugs and stuff like that up there. People
6 hanging out, selling cigarettes and stuff like that. So
7 right at the start of our shift, we went right over there.

8 Q. So where is the plaza in relation to the Towne Gardens?

9 A. It's on Jefferson and William. So the Towne Gardens,
10 it's -- it's just north of the -- or, it's just south. It's
11 kind of in between the -- it's at the corner of William and
12 Jefferson. It's in the Towne Gardens area.

13 Q. Okay. And were you on your own that day, or did you have
14 a partner?

15 A. No, I had a partner.

16 Q. Who was that?

17 A. Joseph Chojnacki.

18 Q. You probably have to spell it.

19 COURT REPORTER: I have it.

20 BY MR. TAYLOR:

21 Q. So what happened when you got there?

22 A. Myself and Joe had pulled into the plaza from Jefferson
23 Avenue. And when we did, we were just kind of looking to see
24 who was in the area, in the specific areas that people would
25 hang out and sell stuff, whether it be cigarettes or drugs,

1 which was usually at -- it's kind of hard to describe it, but
2 like this first bend in the corner from Jefferson and
3 William, which is kind of almost right behind the McDonald's
4 there. And then further down the plaza, there was a corridor
5 that went right to a section of the Gardens.

6 Q. Was that like an alleyway or a breezeway?

7 A. Yeah. And there was a -- like, a grocery store, IGN or
8 IGR or something like that, at the corner.

9 And we had seen a couple individuals standing directly in
10 front of the store, directly in front of the doorway itself,
11 which is why it kind of caught our eyes is because people
12 coming and going in the few seconds, few minutes that we were
13 watching, were obstructing the people from coming and going.
14 They were just literally just perched up and not moving type
15 thing, so --

16 Q. So based on that, well, first of all, where were you
17 making these observations from?

18 A. From within the parking lot.

19 Q. Were you in your car?

20 A. Yes.

21 Q. All right. So what did you do at that point?

22 A. Once we observed them, I probably had a quick interaction
23 with my partner saying, hey, you know, let's go see what
24 those guys are doing.

25 And when we pulled up, they observed us approaching. And

1 we actually pulled in to -- the corridor itself is long
2 enough that you can fit a vehicle in. So we kind of pulled
3 alongside them, and I asked -- I started interacting with
4 them.

5 Q. And they were walking down the breezeway away from you
6 guys?

7 A. Correct.

8 Q. Was that, what, walking southbound towards the Towne
9 Gardens?

10 A. Yes.

11 Q. And at some point there, we've heard that there was a
12 wall built in that breezeway. This was there yet, or no?

13 A. No, it was not. They have since put that in.

14 Q. Since, meaning since this interaction?

15 A. Correct.

16 Q. Okay. So, you pull up, what happens?

17 A. I initially actually started talking to them from within
18 the vehicle. And I spoke to -- I believe it was Marshall
19 Thompson, and I asked him, you know, what did you guys buy at
20 the store?

21 And he said we didn't buy anything.

22 I said, well, what are you guys doing up here then?

23 And he said, well, we're just walking around.

24 So I said, so, at the very least, you're just loitering
25 in front of the store then?

1 He's like, yeah, you're right, we're loitering.

2 So at that point, I said hang on a second, let me ID you
3 guys, see what's going on.

4 So I got out, and I started interacting with Larell
5 Watkins, who was the other individual that was with Marshall
6 Thompson. And I asked him just right from the jump if they
7 had nothing on them that they shouldn't, anything sharp or
8 anything to pat them down for safety to talk to them.

9 And Larell admitted that he had some marijuana on him.

10 MR. TAYLOR: Very quickly, can I have what's already
11 in evidence as 94.1E, as in echo, displayed for the witness
12 and the jury, please?

13 BY MR. TAYLOR:

14 Q. Lieutenant, do you recognize anybody in this photograph?

15 A. I do.

16 Q. Who is -- who do you recognize, and who is he?

17 A. The individual with the T-shirt with the basketball net
18 on it, that's Larell Watkins.

19 Q. Is that the individual you stopped that day in 2014?

20 A. Yes.

21 MR. TAYLOR: Okay. You can take that down.

22 BY MR. TAYLOR:

23 Q. And you said he admitted to having marijuana on him?

24 A. He did. When I asked if he had anything sharp on him or
25 anything that he didn't or shouldn't have on him, or that

1 he's not supposed to have, he said, I got a couple bags of
2 weed on me.

3 Q. And then so you searched him, and what did you find, if
4 anything?

5 A. He had three bags of marijuana in his -- I think it's one
6 of his front pants pockets. And then he had 15 little tiny
7 bags of marijuana in his cargo pocket.

8 Q. And what did he do with that?

9 A. We placed them under arrest, charged them with the
10 marijuana charge, and I believe disorderly conduct for
11 blocking the obstruction of the plaza. And then we submitted
12 them for evidence down at the Central Police Services Lab.

13 Q. And what -- so, just very quickly, what's involved in
14 submitting them to the lab?

15 A. We fill out a lab form that we articulate what it is
16 we're submitting, where it was recovered, and on whom. And
17 then we place it in a secure lockbox, essentially, while it's
18 properly packaged and prepared for the lab technicians to
19 examine. Then we put the lab form in that, in this case, the
20 marijuana in the locker. And it locks on our side. And it's
21 a secure facility. And on the other side, I'm assuming the
22 lab technician or some personnel from that building recover
23 that and then do the examinations or tests on it to see what
24 it is, whatever substance it is.

25 Q. Got you. Lieutenant, I'm going to show you what's

1 previously been marked as 15.1. Can you take a look at that
2 and tell me if you recognize it?

3 A. I do. This is the --

4 Q. What -- go ahead.

5 A. This is the marijuana that I recovered off of Larell
6 Watkins.

7 Q. And how do you know that?

8 A. Because I -- my partner at the time has the envelope it
9 was put in, marked with the CD number, which is our incident
10 number, as well as his last name, my last name, and the date
11 that it was done. But I also recognize it because this is
12 what I recovered off him, so --

13 MR. TAYLOR: And, Your Honor, at this point, if I can
14 put up and read one portion of the stipulation, Joint
15 Exhibit 1?

16 THE COURT: Sure.

17 MR. TAYLOR: So, paragraph 6 from the Joint Exhibit 1
18 reads: Police Officer Joseph Chojnacki received marijuana,
19 which is Government Exhibit 15.1, recovered from Larell
20 Watkins on July 4, 2014, by Lieutenant Scott Culver and
21 submitted Government Exhibit 15.1 to the CPS lab. Officer
22 Chojnacki did not tamper with this exhibit.

23 And based on the officer's testimony and that
24 stipulation, Your Honor, at this point, the government would
25 offer Exhibit 15.1 into evidence.

1 MR. SPITLER: There will be no objection.

2 THE COURT: Received without objection.

3 **The following was received in Evidence:**

4 **GOVERNMENT EXHIBIT 15.1**

5 MR. TAYLOR: That was exhibit -- with that entered
6 into evidence, I just have one other stipulation. This is
7 from Joint Exhibit 3, paragraph 2, which states: Government
8 Exhibit 15.1 was examined by a duly qualified forensic
9 chemist, Stephen Evers, regarding the weight and identity of
10 the evidence described in lab number 14-04458, and Buffalo
11 police CD number 14-1850367. Specifically, Government
12 Exhibit 15.1 was determined to contain marijuana.

13 With that read in, Your Honor, I don't have any other
14 questions for this witness.

15 Thank you, sir.

16 MR. SPITLER: There are no questions, Judge.

17 THE COURT: You may step down, sir. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 (Witness excused at 3:50 p.m.)

20 MR. TAYLOR: Next witness will be Kelvin Sharpe.

21

22 **KELVIN SHARPE II**, having been duly called and
23 sworn, testified as follows:

24 MR. TAYLOR: May, I?

25 THE COURT: You may.

1 **EXAMINATION BY MR. TAYLOR (DIRECT) :**

2 Q. Afternoon, Officer, how are you doing?

3 A. Good, how are you?

4 Q. Good. How long -- how long have you been a police
5 officer?

6 A. Eleven years.

7 Q. And where have you worked during that time?

8 A. A District, B District, housing unit for the majority of
9 it, and currently assigned to the academy.

10 Q. To the academy?

11 A. As an instructor.

12 Q. Where were you assigned back in 2013, specifically May?

13 A. Housing unit.

14 Q. And what's the housing unit?

15 A. We were proactive unit that patrolled the housing
16 projects of Buffalo.

17 Q. Okay. How long have you been assigned there?

18 A. Eight years.

19 Q. Eight years?

20 A. Yes.

21 Q. At -- as of 2013, how long had you been in that unit?

22 A. Four years.

23 Q. And that point, are you familiar with the Towne Gardens?

24 A. Yes.

25 Q. How often would you say you responded there?

1 A. Our station was in the Perrys, so basically leaving the
2 station and traveling north, I passed the Towne Gardens every
3 day.

4 Q. Okay. Specifically in May -- oh, on May 13th of 2013,
5 did your tour of duty take you to the 100 block of Peckham
6 Street in Buffalo?

7 A. Yes.

8 Q. Where is that in relation to the Towne Gardens?

9 A. One block north of Jefferson.

10 Q. One block north?

11 A. Yeah.

12 Q. Okay. And what, if anything, happened that day?

13 A. I observed an individual on his bicycle in the middle of
14 the street violating a section of the Vehicle and Traffic
15 Law, where -- that states that the bicyclist must travel to
16 the right of the road and out of the way of motorists.

17 Q. So based on that, what did you do?

18 A. Made a stop just for identification and check for
19 warrants, that type of thing. When I asked the individual to
20 stop, he did. And when I asked for identification, before
21 having him reach for the identification, I just simply asked
22 do you have any weapons on you that I should know about? He
23 said no, just some weed, as in marijuana.

24 Q. Okay. Did he then proceed to get his identification?

25 A. Yes.

1 Q. So who was it that you stopped?

2 A. Michael Walker.

3 MR. TAYLOR: And actually if I can have what's
4 already in evidence -- can I have Exhibit 104, page 49 shown
5 to the witness?

6 BY MR. TAYLOR:

7 Q. And so page 49 of Exhibit 104 in front of you is a
8 picture of two individuals. Do you recognize either of these
9 two gentlemen?

10 A. Yes. The one to the right with the green and white plaid
11 shirt.

12 Q. And who is that?

13 A. Michael Walker.

14 Q. And is that the individual you stopped that day in May of
15 2013?

16 A. Yes.

17 MR. TAYLOR: All right. You can take that down.

18 BY MR. TAYLOR:

19 Q. So he -- he -- you get his identification, he tells you
20 he has weed on him, what do you do then?

21 A. I recover the weed. And in further search of the
22 individual, I find crack cocaine in his coin pocket of his
23 pants.

24 Q. Coin pocket? Okay. What do you do at that point?

25 A. At that point, he's under arrest for the controlled

1 substance, for the crack, and the marijuana possession.

2 I transport him to central booking to book him for those
3 two charges.

4 Later, I find more crack cocaine on the floor of the back
5 of my patrol vehicle. No one else had been in the back seat
6 of that patrol vehicle since that time that Michael Walker
7 was there. And the back seat was searched before Michael got
8 into the back seat, so there was no other conclusion that
9 that crack cocaine also came from Michael Walker.

10 Q. So just -- just to be clear, so when you -- you take him
11 off the bike, you get the stuff off of him, right?

12 A. Right.

13 Q. When you place him into the back of your patrol vehicle,
14 is -- at that point, the back is empty? There's nothing
15 there?

16 A. Correct.

17 Q. Okay. So you place -- you put him in there, he's booked,
18 and you submit the marijuana and the initial amount of crack
19 cocaine that you -- that you found; is that what you're
20 saying?

21 A. Correct.

22 Q. When do you find the extra, the -- the -- the more, you
23 know, the additional crack cocaine?

24 A. The next shift.

25 Q. So when is that?

1 A. That's the next day.

2 Q. Okay.

3 A. In my unit, there was only one shift working. So no
4 other officer uses my vehicle after me. And on the next day,
5 no other officer works earlier in the day.

6 That vehicle was in the police lot locked, so there was
7 no other person possible to have access to that vehicle.

8 Q. That was going to be my next question. Nobody did -- no
9 one else uses that car other than you on that -- that day, or
10 those two days?

11 A. Correct. For my days, four days of working, only myself
12 drives that vehicle.

13 Q. And that next day, when do you actually find that
14 additional crack cocaine that you say you found?

15 A. At the beginning of the shift.

16 Q. First thing?

17 A. Yes.

18 Q. Okay. And what happens with both the -- the -- the drugs
19 that you find on both of the -- what happens to all of those?

20 A. All of it is submitted to the CPS lab.

21 Q. Fair enough.

22 MR. TAYLOR: And, Judge, I'll go ahead and if I may
23 read from Joint Exhibit 1, the stipulation.

24 It -- sorry, this is from the first -- this is the
25 first sentence or so of paragraph 2, which is that on May 14th

1 of 2013, Officer Jared Domeracki submitted cocaine base, which
2 is Government Exhibit 10 and 10.1, and marijuana which is
3 Government Exhibit 10.2, that was provided to him by Officer
4 Kelvin Sharpe to CPS in a sealed condition.

5 And I'll skip over the middle part to the final bit,
6 which is that Officer Domeracki did not tamper with any of
7 these exhibits.

8 BY MR. TAYLOR:

9 Q. And with that, Officer, can I show you what I've just
10 previously mentioned as -- that has been previously marked as
11 10, 10.1, and 10.2?

12 Do you recognize what I put in front of you?

13 A. Yes.

14 Q. What is that?

15 A. This is the marijuana and the initial crack cocaine taken
16 off his person, and then another -- the other crack cocaine
17 that was later submitted -- or, recovered from the rear of
18 the vehicle.

19 Q. And you recognize it today as being the same as -- the
20 same condition largely as when you submitted it?

21 A. Yes.

22 MR. TAYLOR: And then, Your Honor, with the officer's
23 testimony, as well as the stipulation, at this point, the
24 government would offer Exhibit 10, 10.1, and 10.2 into
25 evidence.

1 MR. SPITLER: No objection.

2 THE COURT: Received without objection.

3 **The following were received in Evidence:**

4 **GOVERNMENT EXHIBIT 10**

5 **GOVERNMENT EXHIBIT 10.1**

6 **GOVERNMENT EXHIBIT 10.2**

7 MR. TAYLOR: And then finally, I'll read from
8 paragraph 1 of Joint Exhibit 3, which states the Government
9 Exhibits 10, 10.1 and 10.2 were all examined by a duly
10 qualified forensic chemist, Kaitlin Drollette, regarding the
11 weight and identity of the evidence described in lab number
12 13-03271, and Buffalo Police Department CD number 13-1330572,
13 specifically Government Exhibit 10 was determined to contain
14 cocaine base, Government Exhibit 10.1 was determined to
15 contain cocaine base with a total weight of 2.84 grams, and
16 Government Exhibit 10.2 contained marijuana.

17 BY MR. TAYLOR:

18 Q. And, Officer, I will take that back.

19 MR. TAYLOR: If it's okay, Your Honor, I'll just put
20 that on the ELMO so the jury can take a look at what these --
21 what this looks like.

22 THE COURT: Sure.

23 BY MR. TAYLOR:

24 Q. So, Officer, I'll start with -- so I'll start with 10.2.
25 Do you see that in front of you?

1 A. Yes.

2 Q. So just explain to the jury what we're looking at.

3 A. That one is the marijuana was recovered from his hoodie
4 pocket.

5 Q. And Exhibit 10, what are we -- what's here? Can you see
6 what that is?

7 A. The wrapped-up piece of paper that contains crack
8 cocaine.

9 Q. And then --

10 A. The additional crack cocaine that was found in the back
11 seat.

12 Q. It's kind of hard to see on that. But what does this
13 crack cocaine -- can you just describe it for the jury, in
14 case they've never seen crack cocaine before?

15 A. White rocky-like substance, that's a chunk.

16 MR. TAYLOR: That's all I have, Your Honor.

17 MR. SPITLER: No questions, Judge.

18 THE COURT: Okay. You can step down, sir.

19 THE WITNESS: Thank you, sir.

20 THE COURT: Thank you.

21 (Witness excused at 3:59 p.m.)

22 THE COURT: Next witness.

23 MR. PARISI: Your Honor, those are all the witnesses
24 the government had available for today.

25 THE COURT: Okay. So we will take our break for the

1 day.

2 Folks, please remember my instructions about not
3 discussing any aspect of the case with anyone. Don't do any
4 research about the case, don't use any electronic tools or
5 tools of technology to communicate about the case or to
6 research the case in any way.

7 Don't read or listen to or observe any newspaper,
8 radio, internet, TV coverage, if there is any. And please
9 remember not to make up your mind as to any fact or issue
10 until you start deliberating.

11 Be back here tomorrow at 9:00, and we will see you
12 then. Be ready to work the whole day. Thanks.

13 (Jury excused at 4:00 p.m.)

14 THE COURT: Okay. Anything we need to put on the
15 record before we break?

16 MR. SPITLER: No, not from me, Judge. Thank you.

17 MR. PARISI: No, Your Honor.

18 THE COURT: Okay. We'll see you folks at 9:00
19 tomorrow.

20 MR. SPITLER: See you tomorrow.

21 (Proceedings concluded at 4:01 p.m.)

22 * * * * *

23

24

25

CERTIFICATION

I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR,
NYRCR, NYACR, Notary Public
Official Reporter
U.S.D.C., W.D.N.Y.

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